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Security Council

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Letter dated 5 October 2000 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its thirty-seventh session, held at Geneva from 26 to 28 September 2000. Delegations from Kuwait, Iraq, the Islamic Republic of Iran and Jordan addressed the Council during its opening plenary meeting.

During the session the Council considered seven reports and recommendations made by the Panels of Commissioners in the E1, E2, E3 and E4 categories of claims. The report on category E1 claims (annex IV) considers oil sector claims, the report on category E2 claims (annex VI) considers non-Kuwaiti corporate claims, the reports on category E3 claims (annexes VIII, X and XII) consider non-Kuwaiti construction and engineering claims, and the reports on category E4 claims (annexes XIV and XVI) consider claims by Governments. The attached tables (annex I) provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council. The Council also considered a special report of the D1 Panel of Commissioners concerning 223 individual category A claims for departure from Iraq or Kuwait (annex II). The decisions on all of the reports, including the report on category E1 claims, were taken by consensus.

As you are aware, the report on category E1 claims has been the subject of extensive discussion in both New York and Geneva, with a postponement of its consideration between sessions to allow the Governing Council to attempt to reach a consensus decision. The discussions by the Security Council culminated in an agreement on three points, which allowed the Governing Council to proceed with the approval of the report and recommendations by consensus, thus continuing the practice of the Governing Council to date.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 11 May to 17 August 2000. The report covers the processing of claims, requests for correction under article 41 of the Provisional Rules for Claims Procedure, the withdrawal of claims and the payment of approved claims.

The Council discussed several issues relating to the processing and payment of claims, including the eleventh report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (annex XVIII), and adopted the accompanying draft decision approving corrections to certain category A claims (annex XIX).

The Council also considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds. It may be noted that the third phase of payment is due to commence with a payment to successful claimants in categories D, E and F in October 2000. Each claimant will receive an initial amount of US$ 5 million and subsequent payments of $10 million, in the order in which the claims have been approved. Pursuant to Governing Council decision 100 (S/AC.26/Dec.100 (2000)), payments are to be made every four months; however, the Council has authorized the secretariat to exceptionally make the second payment under this third phase prior to the expiration of the four-month interval.

The Council discussed the issue of overlapping business loss claims filed in categories C, D and E4 by nationals of Jordan and Kuwait. The delegation of Jordan also raised this issue in its statement at the opening plenary meeting. The Council requested the secretariat to continue its work on the drafting of a memorandum of understanding concerning the modalities of payment of such awards, and to eventually submit to the Council, for its consideration, the final draft and other relevant information.

The Council considered a request for the nullification of a previous withdrawal of a claim in category E. In its request the claimant stated that the notice of withdrawal had been made in error, owing to a misunderstanding concerning the Commission's jurisdiction. The Council decided that a withdrawn claim cannot be reinstated, nor can it be re-filed as the filing deadlines for the submission of claims have passed. The Council also considered a request for the withdrawal of certain elements of a previously approved claim, and requested the secretariat to prepare an information note on the issue of withdrawals.

The Council heard a presentation on the current status of the environmental claims and, in particular, the monitoring and assessment claims that are currently being reviewed by the Panel of Commissioners on category F4. The Council requested the secretariat to prepare an information note on the tracking of the expenditure of funds to be awarded to the environmental monitoring and assessment studies, and to regularly update the Council on the work of the Panel of Commissioners.

The delegation of the Russian Federation raised the issue of the Council reporting on its activities to the Secretary-General and the Security Council, pursuant to paragraph 10 of Security Council resolution 692 (1991). The secretariat informed the Council of the current practice with respect to such reporting and was requested to prepare a written summary of its presentation for the Council's information.

The Council touched upon the report of the Executive Secretary on the work of the Compensation Commission (S/AC.26/2000/R.38) and, in the light of the Security Council's agreement which requires the review of the current procedures of the Compensation Commission, taking into account the recommendations made by the Executive Secretary in his report, recommended that such review take place before the end of the year. The Working Group of the Governing Council has scheduled a series of informal meetings prior to the December session in order to commence the review.

At the closing plenary meeting a number of delegations made statements on the pending review of the procedures of the Commission. The Russian Federation made some specific proposals for changes to the procedures. A number of other delegations stated their willingness to actively participate in the review. The Security Council can therefore expect to receive a report on the review at the end of the year. All of the delegations that spoke at this time expressed their satisfaction that the decision on the fourth instalment of E1 claims had been approved by consensus and conveyed their hope that this spirit of cooperation will continue.

Finally, the Governing Council decided to hold its thirty-eighth session from 5 to 7 December 2000.

(*Signed*) Hans J. **Heinemann**
President of the Governing Council

Annex I

Summary of recommendations

1. Report and recommendations made by the panel of Commissioners concerning the fourth instalment of "E1" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Japan	1	-	562,670,412.43	21,967,260.00
Kuwait	2	-	21,613,516,049.00	15,922,505,120.00
Saudi Arabia	-	1	749,375,858.00	nil
Total	3	1	22,925,562,319.43	15,944,472,380.00

2. Report and recommendations made by the panel of Commissioners concerning the fifth instalment of "E2" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Austria	1	-	3,130,109	1,318,734
Bahrain	3	-	573,330,775	783,596
Belgium	1	1	205,121	481
Egypt	2	3	180,620,777	96,098,098
France	-	4	939,392,692	nil
Germany	-	5	164,145,870	nil
Greece	-	2	147,535	nil
India	1	2	798,976	415,471
Italy	1	-	74,926	74,406
Japan	1	-	37,852	29,513
Jordan	1	-	283,189	283,189
Luxembourg	-	1	2,976,469	nil
Netherlands	1	1	8,468,860	56,497
Saudi Arabia	1	1	575,911	489,131
Tunisia	-	3	[illegible]	nil
Turkey	-	2	10,234,979	nil
United Kingdom	4	1	11,841,369	979,305
United States	3	2	43,733,792	1,691,695

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Corporate claim directly submitted by Mitsui and Co. (U.S.A.) Inc. (claim No. 4002386)	-	1	8,864,411	nil
Total	20	29	1,986,415,540	102,210,116

3. Report and recommendations made by the panels of Commissioners concerning the tenth instalment of "E3" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Belgium	-	1	12,168,700	nil
Canada	-	1	159,718,942	nil
Egypt	-	2	40,221,240	nil
France	1	1	46,095,259	4,921,519
Germany	-	1	16,635,422	nil
Jordan	-	3	4,036,707	nil
Philippines	1	-	288,817	2,880
Poland	1	-	51,683,454	395,514
United Kingdom	2	-	13,061,105	4,787,996
United States	1	2	45,212,172	6,962,766
Total	6	11	389,121,818	17,070,675

4. Report and recommendations made by the panel of Commissioners concerning the fourteenth instalment of "E3" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Belgium	1	-	687,464	8,657
Egypt	-	1	1,913,748	nil
France	1	-	601,879	179,124

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Japan	-	2	2,385,572	nil
Morocco	1	-	2,892,403	96,690
Netherlands	-	1	1,242,225	nil
Russian Federation	1	-	1,596,882	821,745
Sweden	-	1	447,890	nil
Turkey	-	2	574,367	nil
United Kingdom	5	1	22,690,296	2,816,770
Total	9	8	35,032,726	3,922,986

5. Report and recommendations made by the panel of Commissioners concerning the fifteenth instalment of "E3" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Austria	-	1	6,522,682	nil
Croatia	-	1	8,440,131	nil
Germany	1	1	112,826	27,916
India	-	1	25,000	nil
Italy	-	1	6,592,022	nil
Japan	2	2	211,094	17,576
Sweden	-	1	169,150	nil
United Kingdom	1	-	255,985	37,036
United States	2	1	1,594,855	14,542
Yugoslavia, Federal Republic of	1	-	3,137,264	399,904
Total	7	9	27,061,009	496,974

6. Report and recommendations made by the panel of Commissioners concerning the eighth instalment of "E4" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Kuwait	117	2	171,388,529	88,799,956

7. Report and recommendations made by the panel of Commissioners concerning the tenth instalment of "E4" claims

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Kuwait	125	1	192,721,488	81,769,411

Annex II

UNITED
NATIONS

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

SPECIAL REPORT AND RECOMMENDATIONS MADE BY THE "D1" PANEL OF COMMISSIONERS CONCERNING 223 CLAIMS OF BOSNIA AND HERZEGOVINA FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

Introduction and background information to the 223 category "A" claims of Bosnia and Herzegovina

1. This special report contains the recommendations to the Governing Council of the United Nations Compensation Commission ("the Commission"), submitted pursuant to article 37(e) of the Provisional Rules for Claims Procedure ("the Rules") by the "D1" Panel of Commissioners ("the Panel"), being one of two Panels appointed to review individual claims for damages above USD 100,000. In view of the fact that the category "A" Panel of Commissioners ceased functioning in October 1996, the Governing Council instructed the Panel to review 223 category "A" claims of Bosnia and Herzegovina for departure from Iraq or Kuwait in the following special circumstances communicated to the Panel by the Commission's secretariat:

(a) On 27 January 1994, the secretariat received a letter from the Permanent Mission of the Republic of Bosnia and Herzegovina in Geneva, dated 25 January 1994, attaching a list of 1,535 employees of the GIK "HIDROGRADNJA" Civil Engineering and General Contracting Company ("HIDROGRADNJA") who had been working in Iraq on the Bekhme Dam Project and left Iraq immediately following Iraq's invasion of Kuwait. The Mission's letter explained that although HIDROGRADNJA's workforce in Iraq had exceeded 2,100 labourers, the Government of Bosnia and Herzegovina had been able by January 1994, despite war conditions in Bosnia and Herzegovina, to collect the necessary documents to register and file 580 category "A" claims with the Commission for such workers in accordance with the prescribed procedure.

(b) With regard to the remaining 1,535 employees of HIDROGRADNJA, the Mission explained that these workers lived in areas that were then (1994) in a war zone where much of the population had been "ethnically cleansed" and dispersed. The Mission suspected that many of the 1,535 workers on the list might have been killed or injured in the fighting or could still be at the battlefront. Alternatively, the Mission noted that some of the workers might have been incarcerated in concentration camps, were in hospitals or had become refugees in other European countries. Under such conditions, the Mission concluded that it might not be possible for the Government of Bosnia and Herzegovina to collect the necessary documents and details from the workers on the list to permit the normal filing of category "A" claims for them. The Mission therefore requested the Commission to accept its submission of the list of HIDROGRADNJA's workers attached to its letter of 25 January 1994 as constituting the filing of category "A" claims for the individuals in question, thereby making them eligible for compensation as a result of their departure from Iraq.

(c) Subsequent to sending the January 1994 letter, the Government of Bosnia and Herzegovina continued to file category "A" claims in the normal format with the Commission, which eventually totalled 2,587 in number. In the light of the large number of category "A" claims that were filed by the Government of Bosnia and Herzegovina, it was the secretariat's understanding that formal claims had been submitted for all of the 1,535 HIDROGRADNJA employees on the original list. However, this understanding was corrected by HIDROGRADNJA in a 21 December 1998 letter that attached a revised list of 305 workers who had appeared on its original January 1994 list for whom it concluded that category "A" claims had not been filed with the Commission.

(d) In subsequent meetings between the secretariat and the Deputy Permanent Representative of the Mission of Bosnia and Herzegovina in Geneva, it was eventually determined that valid and timely category "A" claims had in fact been filed for 82 of the 305 HIDROGRADNJA employees on the company's list by the Government of the former Federal Republic of Yugoslavia (Serbia and Montenegro). As a result, out of the 305 HIDROGRADNJA employees who appeared on the December 1998 revised list, only 223 were confirmed as not having had category "A" claims submitted on their behalf with the Commission.

2. The Permanent Mission of Bosnia and Herzegovina in Geneva requested the secretariat to bring this issue to the attention of the Governing Council in order for a decision to be taken with regard to the eligibility of the 223 HIDROGRADNJA workers to receive compensation resulting from their category "A" claims. In response, the secretariat submitted to the Governing Council at its thirty-first session held in March 1999, the list of the 223 HIDROGRADNJA workers along with the Mission's proposal to have its January 1994 listing of workers serve as a formal filing for these claimants. After considering the information, the Governing Council requested the secretariat to prepare an information note on the subject for the Council's review at its thirty-second session.

3. In considering the secretariat's information note at its thirty-second session held from 22 to 24 June 1999, the Council took into account the fact that the 223 claims in question had originated in a "war zone". On the assurances received from the secretariat that the consideration of such claims would not have a disruptive effect on the processing of other claims before the Commission, the Council accepted the filing of the 223 claims of Bosnia and Herzegovina as "late claims". Noting the fact that the category "A" Panel of Commissioners had ceased functioning in October 1996, the Council determined that the 223 category "A" claims should be put before the "D1" Panel of Commissioners for review. The "D1" Panel was instructed to submit a special report and recommendations on the 223 claims to the Governing Council for its consideration at a later date.

I. THE "D1" PANEL'S REVIEW OF THE 223 CATEGORY "A" CLAIMS OF BOSNIA AND HERZEGOVINA

4. On 7 September 1999, the secretariat submitted to the "D1" Panel of Commissioners for its consideration a written report and relevant supporting documents concerning the 223 category "A" claims. Among the materials presented to the Panel were supporting documents submitted by HIDROGRADNJA to the Commission in March 1994 in support of its own claim in relation to the Bekhme Dam Project (UNCC claim number 4000224) which was eventually resolved by the "E3" Panel of Commissioners (construction and engineering claims) in its report and recommendations on the first instalment of "E3" claims (S/AC.26/1998/13), which was approved by the Governing Council in decision 58 (S/AC.26/Dec. 58 (1998)). Also presented to the "D1" Panel were compilations prepared by the Government of Bosnia and Herzegovina breaking down the 223 claims into three groupings based on identification and other evidentiary documentation.

5. The first of the three groupings covered 87 of the 223 category "A" claimants for whom the Government was able to provide photocopies of contemporaneous passports with exit stamps and border crossing entries demonstrating that the claimants had departed Iraq during the period of 2 August 1990 to 2 March 1991. For the second grouping, representing 38 of the 223 category "A" claimants, the Government was unable to provide photocopies of the contemporaneous passports used by the claimants during their work in Iraq on the Bekhme Dam Project. However, for this group, the authorities were able to furnish other identification documentation including death certificates and passport numbers as well as certifications and other legal documents provided by municipal governments and police departments in Bosnia and Herzegovina replacing passports that had been lost, destroyed or stolen during the armed conflict in Bosnia and Herzegovina. For the third group, representing 98 of the 223 category "A" claimants, the Government was unable to provide any identification information other than the names of the former HIDROGRADNJA workers.

6. In analyzing these documents, the "D1" Panel recalled that category "A" claims are among the "most urgent claims" for which the Governing Council's decision on the "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1) ("decision 1") set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". The Panel has been aware of the evidentiary standard applicable to category "A" claims, as stated in decision 1 and more specifically in article 35(2)(a) of the Rules, which reads:

> "For the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required."

7. Although the Government of Bosnia and Herzegovina was unable to provide supporting documentation for each of the 223 category "A" claims in question, to demonstrate on an individual basis that each former HIDROGRADNJA worker departed Iraq during the period between 2 August 1990 to 2 March 1991, the Panel was satisfied as to the claimants' entitlements by the thorough documentary evidence provided by HIDROGRADNJA for the portion of its own Bekhme Dam Project claim related to evacuation costs. In particular, the HIDROGRADNJA documentation included contemporaneous records prepared by the company in conjunction with the evacuation of its workforce that listed all of the 223 category "A" claimants by name and date of departure from Iraq (almost all of which took place in either August or September 1990). Based on its analysis of the HIDROGRADNJA company records, the Panel concluded that all 223 claimants had indeed departed from Iraq during the operative period and would therefore, in principle, be eligible to receive compensation for their departure losses.

8. Although the evidence reviewed in support of the claim showed that the category "A" claimants were eligible for compensation, the Panel was in the unique position of having no category "A" claim forms signed by the claimant himself or herself, which it could review. At a minimum, the Panel felt that the claimants should be required to establish their identity before the Commission and to certify that they have been in contact with the Government of Bosnia and Herzegovina and have authorized the Government to file category "A" claims on their behalf. The Panel therefore directed the secretariat to inform the Permanent Mission of Bosnia and Herzegovina that, prior to the Panel being able to recommend the payment of compensation for the 223 category "A" claimants, the Government authorities would have to produce identification documentation for each claimant and a signed authorization for the Government to submit a claim on the claimant's behalf.

II. THE RESPONSE OF THE GOVERNMENT OF BOSNIA AND HERZEGOVINA TO THE PANEL'S REQUIREMENTS

9. Having been informed in September 1999 of the Panel's requirement for identification documentation and for proof that the HIDROGRADNJA workers have authorized the Government to file category "A" claims on their behalf, the authorities in Bosnia and Herzegovina concluded that the most efficient way to present the necessary information to the Panel would be to create a standard claim form for all 223 claimants. The resulting claim form developed by the Government of Bosnia and Herzegovina includes entries providing the following information: the name, nationality and marital status of the claimant; the claimant's passport number, national card or certificate number; Iraqi residence permit number and national claim number; the date and place of birth of the claimant; the claimant's present residential and mailing addresses; the claimant's employer and address in Iraq; and the claimant's date of departure from Iraq and date of return to Bosnia and Herzegovina. On the bottom of each form is the following statement: "I certify that this is my claim form and that the information

in the form is true and correct." Under the statement is the typed name of the claimant and spaces for the claimant to sign and date the claim form as well as to fill in the location in which the claimant's signature was affixed.

10. Having developed a claim form to demonstrate that the claimants authorized the Government of Bosnia and Herzegovina to file category "A" claims on their behalf, the Government authorities began the task of locating each claimant to inform him/her of the necessity of appearing in person at the Ministry of Foreign Trade and Economic Relations in Sarajevo to fill out and sign a claim form, and to provide the necessary supporting identification documentation. The first submission from the Government of Bosnia and Herzegovina in response to the Panel's directive, consisting of signed claim forms and identification documentation for 147 of the 223 claimants, was received by the secretariat on 29 October 1999. On 7 January 2000, signed claim forms and supporting identification materials were received for 28 additional claimants, bringing the total of category "A" claimants meeting the Panel's criteria to 175.

11. With its transmittal note of 7 January 2000, the Permanent Mission of Bosnia and Herzegovina attached a letter from the Ministry of Foreign Trade and Economic Relations in Sarajevo in which the Ministry indicated that, among the 48 individuals for whom signed claim forms and identification documents had not yet been produced, it had reason to believe that a number had already been awarded compensation by the Commission and had received payments through the Governments of the Republic of Croatia or the Federal Republic of Yugoslavia. The Ministry requested the secretariat to investigate the situation and delete any resulting confirmed duplicate claims from its list of 223 category "A" claimants.

12. Pursuant to a review of the Commission's category "A" claim records, the secretariat found that 17 out of the 223 claimants had indeed filed duplicate claims through the Governments of the Republic of Croatia and the Federal Republic of Yugoslavia and had already received award payments for their claims. In response to the Ministry's request, the secretariat therefore deleted the 17 claims in question from the original list of 223 claimants leaving a revised total of 206 category "A" claimants. Of this total, no signed claim forms or identification documentation had been provided for 31 such claimants as of 7 January 2000.

13. The Permanent Mission of Bosnia and Herzegovina provided four additional signed claim forms with accompanying identification information on 17 January 2000. The same materials were submitted for two more claimants on 14 March 2000 and for two final claimants on 14 July 2000. As of that date, the secretariat had received signed claim forms with accompanying identification documentation from 183 out of the revised total of 206 claimants. The Ministry of Foreign Trade and Economic Relations has been unable to locate the remaining 23 claimants and therefore, has not

been able to provide the necessary signed claim forms and supporting identification documentation for them.

14. Prior to the signing of this report and recommendations, the secretariat ran a computerized matching programme on the 183 claims against the entire category "A" claims population for Bosnia and Herzegovina. As a result of this search, three claims were located among the 183, which had already been resolved and awarded compensation through the Government of Bosnia and Herzegovina in previous instalments. The secretariat has therefore removed the three claims in question from the list of 206 claimants leaving a revised final total of 203. As of the date of the signing of this report and recommendations, 180 out of the final revised total of 203 claimants have provided signed claim forms and identification information while 23 have not provided the required documents.

III. CONCLUSION

15. Pursuant to article 37(e) of the Rules, the Panel presents its recommendations regarding the 203 category "A" claims of Bosnia and Herzegovina. Having considered the results of the verification of the claim forms and their attachments, the Panel finds that all 203 claimants are eligible to receive compensation for their losses, and based on the fact that the Government of Bosnia and Herzegovina has complied with the Panel's requirement by providing the necessary signed claim forms and identification documentation for 180 out of 203 claimants and, bearing in mind the urgent humanitarian nature of such claims, the Panel recommends the payment of compensation for the 180 category "A" claimants in the total amount of USD 720,000.

16. The Panel understands that the Government of Bosnia and Herzegovina is continuing its efforts to locate the remaining 23 claimants and to obtain from them the signed claim forms and identification documents in compliance with the Panel's requirement. The Panel therefore recommends the award and payment of compensation in the amount of USD 4,000 each (totalling USD 92,000) to such of the 23 claimants from whom the Government of Bosnia and Herzegovina is able to receive and file with the Commission the required signed claim forms and identification documentation.

17. Confidential reports containing the breakdown of amounts to be paid to each indivdual claimant and a list of the duplicate and pending claims will be provided to the Government of Bosnia and Herzegovina.

18. On the basis of the consideration formulated in Part IV, section C, sub-section 3, of the first report of the category "A" Panel (S/AC.26/1994/2), the Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council's decision on "Awards of interest" (S/AC.26/1992/16) ("decision 16"). The Panel also adopts the view expressed by the category "A" Panel that the phrase "the date the loss occurred" in decision 16 should be

interpreted to be a single date for all category "A" claims and that the date of Iraq's invasion of Kuwait, 2 August 1990, should serve as the fixed date.

Geneva, 17 August 2000

(Signed)	R.K.P Shankardass Chairman
(Signed)	H.M. Joko Smart Commissioner
(Signed)	M.C. Pryles Commissioner

Annex III

UNITED
NATIONS

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Security Council

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning 223 claims of Bosnia and Herzegovina for departure from Iraq or Kuwait (category "A" claims) taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 37 of the Provisional Rules for Claims Procedure ("the Rules"), the special report and recommendations made by the "D1" panel of Commissioners concerning 223 claims of Bosnia and Herzegovina for departure from Iraq or Kuwait (category "A" claims), 1/

Noting, that the above claims satisfy the criteria for the acceptance of late-filed claims due to the existence of a war situation or civil disorder and evidence of a prior attempt to file the claims within the relevant filing deadlines,

1. Approves the recommendations made by the panel of Commissioners and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning 180 claims, totaling USD 720,000, as listed in paragraph 15 of the report,

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1/ The text of the report appears in document S/AC.26/2000/15. In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (article 30, paragraph 1 and article 40, paragraph 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to the Government of Bosnia and Herzegovina separately.

3. Decides also to approve, subject to receipt by the Commission of the required documentation not later than the deadline as stated in paragraph 2 of decision 12 (S/AC.26/1992/12), the recommended awards to 23 claims, in the amount of USD 4,000 per claim, totaling USD 92,000, as listed in paragraph 16 of report,

4. Decides further that payment with regard to the claims referred to in paragraph 2, above, will be made in the next round of payments, and payment with regard to the claims referred to in paragraph 3, above, will be made in the first round of payment following receipt by the Commission of the required documentation,

5. Recalls that when payments are made, the Government of Bosnia and Herzegovina shall, pursuant to the terms of decision 18 (S/AC.26/Dec. 18 (1994)) distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Notes that no recommendations have been made for 20 duplicate claims,

7. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, the Government of the Republic of Iraq and the Government of Bosnia and Herzegovina.

Annex IV

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF "E1" CLAIMS

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List of claimants

Name	Defined
Arabian Oil Company	"AOC"
Saudi Arabian Oil Company	"Saudi Aramco"
Kuwait Petroleum Corporation	"KPC"

List of currencies

Name	Defined
Kuwait dinar	KD
Saudi Arabian riyal	SR1
United States dollar	US$

Abbreviations

Name	Defined
Partitioned Neutral Zone	"PNZ"
Organisation of Petroleum Exporting Countries	"OPEC"
Government Selling Price	"GSP"
Saudi Arabian Marketing and Refining Company	"SAMAREC"
Production and sales loss claim	"PSL claim"
Fluid loss claim	"FL claim"
Barrels per day	"bpd"
Kuwait Natural Gas	"KNG"
Kuwaiti Ministry of Electricity and Water	"MEW"
Kuwait Oil Company	"KOC"
Kuwait National Petroleum Corporation	"KNPC"

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Introduction

1. This is the fifth report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review energy sector claims submitted by corporations, other private legal entities and public-sector enterprises (category "E1" claims) pursuant to article 38(e) of the Provisional Rules for Claims Procedure[1] (the "Rules").

2. This report contains the determinations and recommendations of the Panel with respect to the fourth instalment of E1 claims, comprising four claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the "fourth instalment"), which was presented to the Panel on 31 March 1999.

3. The fourth instalment claims were filed by oil and gas companies operating in the State of Kuwait ("Kuwait") and the Kingdom of Saudi Arabia ("Saudi Arabia"). The claimants in this instalment assert losses arising from the disruption of their businesses and the destruction of oil and gas by fires and spills resulting from the well blow-outs that occurred at the end of the conflict.

4. The claims included in this report are listed in the following table. With one exception, the claim amounts shown in this table are the total of all amounts claimed in all filings made with the claim. The claim of Arabian Oil Company has been divided into two claims. The elements of the original claim relating to crude oil production losses remain in this instalment under the original claim number, 4000959. The other elements of the claim have been given a new claim number, 4005977, and that new claim has been assigned to the eighth instalment of E1 claims.

Table 1. The fourth instalment of E1 claims

Claimant	Claim number	Claim amount (US$)	Submitting country
Arabian Oil Company	4000959	562,670,412	Japan
Saudi Arabian Oil Company	4002637	749,375,858	Saudi Arabia
Kuwait Petroleum Corporation	4003197	14,973,000,000	Kuwait
	4004439	6,640,516,049	
Total		22,925,562,319	

5. This report considers the claims net of any claims for interest or claim preparation costs, as these issues are dealt with separately.

6. To estimate the effects of the invasion and occupation on their business, and thus, to measure their losses, certain claimants compare what they term "no-invasion" projections of performance with their actual performance during and following the invasion and occupation. As used by the claimants, as well as by the Panel in this report, the use of the term "no-invasion" to describe a figure means that the figure described is an estimate of what that figure would have been if Iraq had not invaded and occupied Kuwait in 1990/91. In this report, the Panel has also rounded figures to the nearest whole dollar amount, except in the case of certain claim amounts, which are reported as they appear in the statements of claim.

I. PROCEDURAL HISTORY

7. The role and functions of panels of Commissioners operating within the framework of the Commission and the nature and purpose of the proceedings conducted by the panels are both discussed by this Panel in the Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of "E1" Claims (S/AC.26/1999/10) (the "E1 Second Instalment Report"), paras. 3-4.

8. In its review of the claims, the Panel has employed the full range of investigative procedures available to it under the Rules. For some claims, the Panel has also been assisted by the responses of the claimants to article 34 notifications, interrogatories and requests for documents. The Government of the Republic of Iraq ("Iraq") has also filed replies to the claims, which include specific comments on and analyses of the claimed losses as well as legal argument on the compensability of particular loss elements.

9. The secretariat of the Commission (the "secretariat") commenced a detailed preliminary assessment of the fourth instalment claims in January 1999. As a result of this assessment, a number of formal deficiencies in the claims were identified, as were a number of areas where further documentation or information were required from the claimants. Accordingly, notifications with respect to these deficiencies were issued to each of the claimants in the fourth instalment pursuant to article 34 of the Rules (the "article 34 notifications").

10. On 31 March 1999, the Panel issued its first procedural orders initiating its review of the claims. In view of the complexity of the issues raised, the volume of documentation underlying the claims and the amount of compensation sought by the claimants, the Panel classified each of the claims as "unusually large or complex" claims within the meaning of article 38(d) of the Rules.

11. The Panel also instructed the secretariat to transmit to Iraq the documents filed by the claimants with the claims and invited Iraq to submit its replies to the claims, together with any documentation Iraq might wish to rely on in the present proceedings.

12. Because of the complexity of the claims, the Panel engaged consultants with expertise in accounting, petroleum engineering, and petroleum economics to assist it in its review and evaluation of those claim elements that were found to be compensable.

13. After receiving responses to the article 34 notifications, the Panel directed on-site inspection missions to two of the claimants to review

documents and other evidence and to interview witnesses involved in the claims. During these on-site inspections, the claimants produced dozens of witnesses for interview and many thousands of documents for review.

14. This initial work yielded specific legal recommendations and questions and identified areas of the claims for which further information or evidence was required. To address this need, the Panel, assisted by the secretariat and the expert consultants, prepared questions and formal requests for additional evidence for the claimants. Such questions and requests (collectively referred to herein as "interrogatories") typically sought clarification of statements in the claim or additional documentation regarding the claimed losses.

15. Iraq filed responses to each of the fourth instalment claims. In its responses, Iraq addressed most of the individual claim elements submitted by the claimants. Iraq generally provided argument and, in some instances, evidence to support its positions.

16. The Panel issued procedural orders dated 21 May 1999 to Kuwait Petroleum Corporation ("KPC"), in which the Panel invited the claimant to respond by specified dates to the interrogatories annexed to the procedural orders. By procedural orders dated 29 July 1999 and 14 September 1999, the Panel issued further interrogatories to KPC, which responded with narrative answers and produced documents and other evidence.

17. Throughout the process, the claimants also responded to a number of requests from the secretariat for clarification or completion of its responses to interrogatories. Iraq was also invited to submit its comments on the interrogatories submitted to the claimants.

18. After reviewing the claims, the evidence submitted with the claims, the claimants' responses to the article 34 notifications, interrogatories and informal requests, the Panel directed the secretariat and its expert consultants to prepare a preliminary report for each of the fourth instalment claims found by the Panel to contain compensable losses. In these reports, the expert consultants outlined their opinion on the appropriate valuation of compensable claim elements. The Panel reviewed these preliminary reports and provided further instructions to the expert consultants as necessary. The expert consultants then prepared final reports that assisted the Panel in performing its work and making the recommendations contained in this report.

19. Due to the extraordinary size and complexity of the claims of KPC, the Panel determined that it could be helpful to conduct oral proceedings on certain limited issues presented by those claims. Accordingly, pursuant to a procedural order, the Panel convened an oral proceeding for

14 December 1999 and invited the claimant and the representatives of Kuwait and Iraq to attend and participate.

20. At the appointed time, the claimant and representatives of both Kuwait and Iraq appeared for the oral proceeding. The Panel appreciates the informative presentation on the identified issues by the claimant.

21. The Panel notes with some disappointment, however, that Iraq chose not to address the Panel on the issues presented by the claims, as specifically requested by the Panel, but rather chose to address its comments solely to matters over which the Panel has no control and not to address the substance of the claims. The Panel, therefore, terminated the oral proceedings following Iraq's presentation.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

22. The law to be applied by the Panel is set forth in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

23. According to paragraph 16 of Security Council resolution 687 (1991), "Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

24. The Panel notes that the issue of Iraq's liability for losses falling within the Commission's jurisdiction has been resolved by the Security Council and is not subject to review by the Panel. A complete discussion of the liability of Iraq as it relates to resolution of the claims and the Governing Council's guidance on what constitutes a direct loss may be found at E1 Second Instalment Report, paras. 18-29.

C. Evidentiary requirements

25. Article 35(1) of the Rules provides general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)."

26. A complete discussion of the Panel's application of this standard to the evidence submitted with the claims may be found at E1 Second Instalment Report, paras. 30-32.

III. CLAIM OF ARABIAN OIL COMPANY

27. Arabian Oil Company Ltd ("AOC") is a corporation registered under the Commercial Code in Japan. In 1957 and in 1958, AOC entered into two separate concession agreements with Saudi Arabia and Kuwait.[2] Pursuant to these agreements, AOC received the exclusive right and responsibility for petroleum exploration, development and production in the offshore area of the Partitioned Neutral Zone ("offshore PNZ") between Saudi Arabia and Kuwait.[3]

28. Pursuant to a 1974 Participation Agreement and a 1981 Memorandum of Understanding, Saudi Arabia and Kuwait became joint venture partners in the offshore PNZ operations of AOC by acquiring an equity interest in AOC's assets and operations. As of 2 August 1990, AOC held a 40 per cent equity interest in the joint venture, and Saudi Arabia and Kuwait each held a 30 per cent equity interest as AOC's joint venture partners. AOC submits this claim on behalf of itself and its joint venture partners, Saudi Arabia and Kuwait.

29. AOC was able to continue production and shipment of crude oil and refined oil products from 2 August 1990 through 16 January 1991. AOC claims, however, that as a result of Iraq's unlawful invasion and occupation of Kuwait, sales of crude oil and products were reduced from the average sales levels for the five years prior to the invasion and occupation. Further, AOC claims that, as a result of military operations by Iraqi forces, AOC had to cease production in the offshore PNZ from 17 January 1991 to 1 June 1991. On behalf of itself and its joint venture partners, Saudi Arabia and Kuwait, AOC claims a loss of revenues in the amount of US$ 562,670,412.43.

30. In support of this claim, AOC submitted certain documentary evidence, including audited financial statements, management accounts, trial balances, ledgers, sales invoices, production data, contracts and correspondence. At the Panel's direction, the secretariat and its expert consultants interviewed certain AOC personnel. As part of these interviews, AOC prepared and submitted additional documents and other evidence.

A. Nature of AOC activities

31. AOC explores for, produces, processes and markets crude oil and oil products in the offshore PNZ. AOC's activities are centred on the Khafji offshore oil field and on refining and loading facilities at Al-Khafji, approximately 20 km south of the Saudi Arabia-Kuwait border.

32. AOC claims that its production level is limited by production quotas established by the Organisation of Petroleum Exporting Countries ("OPEC"). AOC states that Saudi Arabia and Kuwait determine the level of the production quota of the joint venture in the offshore PNZ every month based on OPEC production quotas or the requirements of both governments. AOC claims that Saudi Arabia usually notifies AOC of these production quotas by letter.

33. As AOC's joint venture partners, Saudi Arabia and Kuwait each contribute 30 per cent of the costs and expenses arising from the oil operations and each is entitled to 30 per cent of the crude oil produced. Saudi Arabia also contributes to the crude oil processing costs of AOC. AOC receives the remaining 40 per cent of the crude oil and bears 40 per cent of the costs and expenses.

34. Based on various agreements, AOC usually buys back each joint venture partner's share of crude oil and, therefore, is the entity that sells or disposes of 100 per cent of the crude oil produced from the offshore PNZ. This crude oil is known as Khafji and Hout crude oil. AOC also sells all of the offshore PNZ crude oil processed into refined oil products at the Al-Khafji refinery.

35. AOC states that Saudi Arabia and Kuwait set the Government Selling Price ("GSP") for crude oil, and Saudi Arabia sets the GSP for refined oil products. Saudi Arabia and Kuwait notify AOC of the GSP on a monthly basis by letter. GSP is calculated as the arithmetic mean of the monthly average of daily spot prices of Oman and Dubai crude oils as reported in Platt's Oilgram Price Report[4], plus a price differential for each month set by the governments. AOC claims that it buys back each joint venture partner's share of crude oil produced at GSP, and that it sells the majority of the crude oil and products from the offshore PNZ at GSP.

36. AOC claims that selling at GSP ensures stable prices for its customers, most of whom are long-term Japanese customers.

37. By selling at GSP, AOC claims that its profits on its 40 per cent share of the oil are equal to the differential between the GSP and its costs. AOC's joint venture partners realise profits from the difference between their cost contributions and the GSP for each of their 30 per cent share in the joint venture. AOC claims it makes no profit on the oil bought at GSP from its joint venture partners, because it sells this oil at GSP to its customers.

38. Pursuant to the concession agreements, AOC also makes payments of royalty to Saudi Arabia and Kuwait based on its share of production in the offshore PNZ and payments of taxes based on its share of revenues. In

addition, during the verification process, the Panel learned that a mechanism, termed a "supplementary make-up payment," is employed to fix AOC's profit at a specified level. Supplementary make-up payments are transferred between AOC and the governments as necessary to ensure a fixed profit for AOC.

B. AOC's claim

39. AOC states its claim as follows:

Table 2. AOC's claim

Claim element	Claim amount (US$)
Loss of sales proceeds from sale of crude oil to Japanese purchasers	279,626,579.78
Loss of sales proceeds from sales of crude oil to non-Japanese purchasers	163,524,357.71
Loss of sales proceeds from sales of refined oil products	122,606,237.61
Deduction from the claim for lost crude oil in settling tank	(3,086,762.67)
Total	562,670,412.43

40. AOC claims that 70 to 80 per cent of its annual sales of crude oil are made to 23 Japanese purchasers. AOC claims that as a result of the invasion and occupation, these sales declined from 2 August 1990 to 1 June 1991 ("claim period"), with the result that AOC suffered a loss of revenues.

41. For each of the claimed loss periods - 2 August 1990 to 16 January 1991 and 17 January to 1 June 1991 - AOC estimates the loss during that period using the average volumes of crude oil sold to Japanese purchasers during the same periods in the five years preceding the loss period. AOC states that, as a result of the invasion and occupation of Kuwait, it was not able to sell 17,625,829 barrels of Khafji crude oil and 3,013,105 barrels of Hout crude oil during these periods.

42. AOC applies the average GSP set by Saudi Arabia and Kuwait during the invasion and occupation to the lost sales volumes to calculate its lost revenues. AOC applies the GSP for Khafji crude of US$ 25.663 and US$ 13.697, and the GSP for Hout crude of US$ 28.082 and US$ 16.427 for the claim period.

43. Based on the above calculations, AOC claims that it lost revenues of US$ 279,626,579.78 as a result of lower sales to Japanese purchasers.

However, AOC subtracts US$ 3,086,762.67 from this amount to account for its claim for loss of crude oil in a settling tank in a separate claim, which will be reviewed by this Panel in a later instalment.[5] AOC therefore claims the total amount of US$ 276,539,817.11 for the loss of sales proceeds from crude oil to Japanese purchasers.

44. AOC claims that 20 to 30 per cent of its annual sales of crude oil are made to non-Japanese purchasers, mainly to Southeast Asian/Oceanic customers. AOC claims that as a result of the invasion and occupation, these sales declined in the claim period, and AOC suffered a loss of revenues.

45. For each of the claimed loss periods - 2 August 1990 through 16 January 1991 and 17 January through 1 June 1991 - AOC estimates the loss during that period using the average volumes of crude oil sold to non-Japanese purchasers during the same periods in the five years preceding the loss period. AOC calculates that it has lost a sales volume of 9,786,989 barrels of Khafji crude and 903,937 barrels of Hout crude.

46. AOC applies the same crude GSP as above to the lost sale volumes to non-Japanese purchasers to calculate lost revenues. AOC therefore claims US$ 163,524,357.71 for the loss of sales proceeds from crude oil to non-Japanese purchasers.

47. AOC claims that approximately 10 per cent of its production of crude oil is refined into naphtha, diesel oil, marine diesel oil and fuel oil (hereinafter collectively referred to as "refined oil products"). AOC claims that, as a result of the invasion and occupation, its production of refined oil products was severely curtailed between 2 August 1990 and 16 January 1991 and ceased completely between 17 January 1991 and 1 June 1991.

48. For each of the claimed loss periods - 2 August 1990 through 16 January 1991 and 17 January through 1 June 1991 - AOC estimates the loss during that period using the average volumes of products sold to customers during the same periods in the five years preceding the loss period. AOC calculates that it lost a sales volume of 5,757,277 barrels of refined oil products. AOC applies the weighted average GSP of US$ 25.746 and US$ 18.793, allegedly set by Saudi Arabia during the claimed loss periods, to the volume of refined oil products not sold to calculate its lost revenues. AOC therefore claims US$ 122,606,237.61 for the loss of sale proceeds from refined oil products on behalf of itself and Saudi Arabia.

49. AOC claims that it did not save any costs during Iraq's occupation of Kuwait and therefore makes no deductions from its claim for lost revenues. AOC maintains that most of its costs are fixed, and therefore it continued to incur these costs throughout the claim period. AOC does not make a

deduction for the cost of buying back oil from Saudi Arabia and Kuwait at GSP because it is also claiming for lost revenues on behalf of these two governments who have equity interests in the joint venture in the offshore PNZ.

C. Verification and analysis

50. At the outset, the Panel finds that AOC and its joint venture partners suffered a loss following the decline in production of crude oil and refined oil products in the offshore PNZ as a result of Iraq's invasion and occupation of Kuwait.

51. The Panel notes that AOC calculates the joint venture's losses based on volumes of oil not produced and sold, and that it employs the actual market prices following Iraq's invasion and occupation of Kuwait to value such losses.

52. The Panel reviewed the evidence submitted by AOC to verify the joint venture's volumes, prices and sales revenues for the calendar years 1985 to 1991. The Panel's consultants sampled the data submitted and their underlying records, and the Panel is satisfied that the evidence submitted by AOC is reliable and accurate.

53. AOC makes two assumptions in calculating the claim amount. First, had it not been for Iraq's invasion and occupation of Kuwait, the joint venture would have produced and sold volumes of crude oil and refined oil products equal to the average volumes produced and sold in the five years prior to 2 August 1990. Second, the joint venture would have sold these volumes at the GSPs that prevailed during Iraq's occupation of Kuwait.

54. The Panel notes that the joint venture's monthly production prior to 2 August 1990 fluctuated considerably. However, the Panel finds that AOC's assumption that the joint venture would have produced and sold volumes equal to the average volumes of five years prior to 2 August 1990 is reasonable because this period is sufficient to overcome the effect of the fluctuations in production.

55. Based on AOC's production and sales data, the Panel finds that, in the absence of Iraq's occupation of Kuwait, the joint venture would have produced and sold 80,186,397 barrels. The Panel also finds that the joint venture actually produced and sold only 43,099,260 barrels during this period. Thus, the joint venture's production and sales declined by 37,087,137 barrels as a direct result of Iraq's occupation of Kuwait.

56. The Panel concludes that use of the GSPs that prevailed during Iraq's occupation of Kuwait to value the unsold crude oil and refined oil products results in an overstatement of the loss. The Panel reaches this conclusion

because oil prices after 2 August 1990, which had a direct effect on the GSPs, increased drastically as a result of Iraq's invasion and occupation of Kuwait and the fears of shortages that ensued. The Panel finds that the joint venture should not benefit from Iraq's invasion and occupation of Kuwait. Instead, the Panel finds that the claimant should be returned to the position in which it would have been if Iraq's invasion and occupation of Kuwait had not occurred. Therefore, the Panel finds that the claim should be adjusted to reflect the joint venture's real loss.

57. To do so, the Panel first instructed its consultants to estimate the GSPs that would have prevailed during the loss period if Iraq had not invaded and occupied Kuwait. The Panel's consultants then adjusted the no-invasion GSPs for the premiums and discounts to market prices at which AOC historically sold its crude oil and refined oil products, and applied them to the no-invasion volumes in order to estimate the joint venture's lost revenue. From AOC's sales records, it appears that the prices of certain products like diesel and fuel remained constant prior to and after Iraq's invasion and occupation, and therefore, actual prices of these products have been used in this calculation.

58. Based on the above calculation and a review of the joint venture documents, related agreements and AOC's accounting records, the Panel finds that the joint venture would have earned no-invasion revenues of US$ 1,086,278,276 from the sale of 80,186,397 barrels of crude oil and refined oil products. From this amount, the Panel deducts actual revenue of US$ 1,058,866,227 that the joint venture earned from the sale of 43,099,260 barrels of crude oil and refined oil products between 2 August 1990 and 16 January 1991. Consequently, the Panel finds that the joint venture lost revenues in the amount of US$ 27,412,049.

59. However, as discussed in para. 38, supra, when there is actual production in the offshore PNZ, the governments receive royalty from AOC in respect of their share of the production.

60. As stated in para. 55, supra, there was a shortfall in production due to Iraq's occupation of Kuwait. The Panel considers that no royalty would be payable by AOC to the governments on its share of oil not lifted, because there is no corresponding loss.[6] Therefore, the Panel deducts the royalty amount from the claim.

61. The Panel calculates that AOC's share of the 37,087,137 barrels of oil not lifted is 40 per cent, or 14,834,855 barrels. AOC pays royalty to Saudi Arabia and Kuwait at the rate of 20 per cent on its share of production valued at the tax reference price specified in the concession agreement. After taking into account the no-invasion GSPs, the Panel considers that the value of royalty on oil not lifted is US$ 2,358,026.

Therefore, the Panel deducts royalty payments on oil not lifted of US$ 2,358,026 from the lost revenue amount of US$ 27,412,049. After this deduction, the base amount recommended as compensation to the joint venture is US$ 25,054,023.

62. As discussed in para. 38, supra, the governments receive tax from AOC's share of revenues in the joint venture. Supplementary make-up payments are transferred between the governments and AOC to ensure AOC receives a consistent level of profit from the joint venture. Based on the evidence and the concession agreements, the Panel believes that any income received by AOC is subject to taxes and supplementary make-up payments. Therefore, consistent with its previous finding in its second instalment report, the Panel does not deduct taxes and supplementary make-up payments from the compensation amount.[7]

63. Further, the Panel notes that the crude oil that was not produced by the joint venture during the claim period could arguably be produced and sold in the future. However, given the expected reservoir life for the offshore PNZ, at present levels of production, the sales of the oil not produced will not occur until decades into the future. Thus, the present value of such future sales is immaterial, and therefore, the Panel does not deduct the value of oil not produced from the claim amount.

64. AOC states that all of the joint venture's costs are fixed and that these costs continued to be incurred from 2 August 1990 to 1 June 1991. Based on a review of AOC's accounts, its underlying financial and accounting records and other evidence, the Panel concludes that AOC and its joint venture partners did not benefit from any cost savings due to Iraq's invasion and occupation of Kuwait.

65. Finally, the Panel makes an adjustment for AOC's deduction for lost crude oil in a settling tank, as discussed in para. 43, supra. The Panel deducts US$ 3,086,763 from the compensation amount of US$ 25,054,023. Based on the foregoing calculations, the Panel finds that AOC's total lost revenue in the offshore PNZ is US$ 21,967,260.

Table 3. Panel's findings: lost revenue in the offshore PNZ

Claim element	No-invasion revenue (US$)	Actual revenue (US$)	Total AOC lost revenue in the PNZ (US$)
Loss of sales proceeds from sale of crude oil and refined oil products	1,086,278,276	(1,058,866,227)	27,412,049
Deduction of royalty value on oil not lifted			(2,358,026)
Sub-total			25,054,023
Deduction from the claim for lost crude oil in a settling tank			(3,086,763)
Total	1,086,278,276	(1,058,866,227)	21,967,260

66. Accordingly, the Panel recommends compensation in the amount of US$ 21,967,260 for AOC and its joint venture partners as shown in the following table.

Table 4. AOC claim: Panel's recommended compensation

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Loss of sales proceeds from sale of crude oil and refined oil products	562,670,412.43	(540,703,152.43)	21,967,260
Total	562,670,412.43	(540,703,152.43)	21,967,260

IV. CLAIM OF SAUDI ARABIAN OIL COMPANY

A. Facts and contentions

67. Saudi Arabian Oil Company ("Saudi Aramco") files this claim on its own behalf, and in its capacity as a successor in interest to Saudi Arabian Marketing and Refining Company ("SAMAREC").

68. Saudi Aramco was established by Royal Decree on 13 November 1988 as an integrated oil company wholly owned by the Kingdom of Saudi Arabia ("Saudi Arabia"). SAMAREC was established as a "company under formation" on 1 January 1989 to integrate the oil refining and petroleum products marketing operations of Saudi Arabia. On 14 June 1993, Saudi Arabia cancelled the formation of SAMAREC and transferred its operations to Saudi Aramco.

69. Saudi Aramco alleges that as a result of Iraq's unlawful invasion and occupation of Kuwait, SAMAREC was required by the Council of Ministers of Saudi Arabia to supply fuel oil and other refined petroleum products to the Saudi Arabian and other military forces (hereinafter referred to as "Allied Coalition Forces") for "the enhanced defence of Saudi Arabia." Saudi Aramco defines enhanced defence as "defence efforts above and beyond normal Saudi defence levels prior to the invasion." Saudi Aramco claims that Saudi Arabia required enhanced defence operations from 2 August 1990 to 31 January 1992. Saudi Aramco seeks compensation in the amount of US$ 749,375,858 for losses incurred as a result of supporting the enhanced defence operations throughout this period.

70. Saudi Aramco asserts that its claim excludes all costs relating to ordinary Saudi Arabian military operations and all offensive operations. The claim comprises the following elements.

Table 5. Saudi Aramco's claim

Claim element	Claim amount (US$)
Fuel oil and other products	660,817,356
Operating expense	
Manpower	4,198,422
Hauling	20,781,113
Vessel chartering	36,451,860
Utility and energy charges	6,600
Repair and maintenance	236,430
Handling	6,210,920
Communications	1,388
Advertising	40,019
Rental	1,984,314
Consumable supplies	4,250,959
Temporary facilities	1,004,021
Insurance expenses	13,322,377
Other costs	42,722
Professional fees	27,357
Subtotal Operating expense	88,558,502
Total	749,375,858

71. The claim amount is calculated as the number of litres of fuel oil and products supplied, multiplied by their respective "international market prices," plus the increased operating costs SAMAREC incurred in producing, transporting and managing these increased volumes.

72. Prior to 2 August 1990, SAMAREC supplied all petroleum products to the military forces of Saudi Arabia. These deliveries would be invoiced to the respective Saudi Arabian military units by one of SAMAREC's three distribution centres (Eastern Region, Central Region and Western Region). However, following Iraq's invasion of Kuwait and the decision to supply petroleum products to the Allied Coalition Forces, all deliveries of products were allegedly recorded and advised to the Ministry of Defence and Aviation of Saudi Arabia by SAMAREC's Corporate Headquarters. This procedure was followed from 1 August 1990 through 1 February 1992.

73. Saudi Aramco claims that by a letter from the Minister of Petroleum and Mineral Resources of Saudi Arabia to the President Designate of SAMAREC, dated 8 August 1990, SAMAREC was directed "to take all the decisions and measures that [are deemed] appropriate with regard to securing the supplies to all regions of the Kingdom." Saudi Aramco asserts that the 8 August letter was the direction to SAMAREC to deliver the fuel oil and products that are the subject of this claim. Saudi Aramco claims

that immediately following this letter, SAMAREC established an Emergency Committee to fulfil its tasks "to provide fuel and other oil products required for the enhanced defence of Saudi Arabia."

74. The Emergency Committee allegedly built inventories of the required products as quickly as possible to ensure that they could be delivered to the Saudi Arabian and other military forces. SAMAREC built inventories of the required products by, inter alia, increasing refinery throughput, modifying refineries for certain products, importing products to augment domestic production, acquiring additional storage and equipping other refineries to deliver the products.

75. Saudi Aramco argues that the cost of the supplies of fuel oil and refined oil products comprising the present claim are compensable because they were used for defence purposes necessitated by Iraq's invasion and occupation of Kuwait.

76. Operation Desert Shield commenced on or about 7 August 1990, when the first of the Allied Coalition Forces began arriving in Dhahran with the consent of Saudi Arabia, and ended on 8 November 1990, when Operation Desert Storm commenced. Saudi Aramco deems Operation Desert Storm an offensive operation, as it was designed to drive the Iraqi forces from Kuwait by military force and, therefore, does not claim any compensation for deliveries towards that operation.

77. Saudi Aramco seeks to demonstrate that, after 8 November 1990, the claim is limited to extraordinary expenses for what the claimant terms "defensive purposes" by referring as a benchmark to the volumes of products supplied to the Allied Coalition Forces during the early months of the invasion of Kuwait by Iraqi forces. Saudi Aramco asserts that in the months of August, September and October of 1990, the volumes of products, 549,923,000 litres in total, supplied to the Allied Coalition Forces were for purely defensive purposes. Saudi Aramco calculates the average of these volumes to be 183,307,000 litres per month. From all the volumes claimed, Saudi Aramco subtracts the average monthly volumes ordinarily delivered to the Saudi Arabian military prior to the invasion, which are asserted to be 83,779,000 litres per month.

78. Saudi Aramco distinguishes three periods in which SAMAREC had to supply products to the Allied Coalition Forces. For the months of August through October 1990, Saudi Aramco asserts that the actual volumes of products delivered were for defensive purposes and, therefore, the costs of providing these products are compensable. From November 1990 through March 1991, Saudi Aramco claims that the volumes supplied to the Allied Coalition Forces increased significantly in the preparation for the Gulf War, i.e. for offensive operations. Saudi Aramco asserts that, out of the oil and

products delivered during this period, a volume corresponding to the average volume delivered during the previous months (183,307,000 litres x five months) was for defensive purposes, and therefore is compensable. From April 1991 through January 1992, Saudi Aramco alleges that as the continued defence of Saudi Arabia was required, it should be compensated for costs incurred for defensive purposes based on the lower of 1) actual volumes delivered during these months or 2) the average of the volume delivered during the months of August through October 1990. The total volume of products for which Saudi Aramco claims compensation is 2,941,854,000 litres.

79. Saudi Aramco values the claim amount by multiplying the total volume by the international sales prices of the various products at the time they were delivered. Generally, the international sales prices are prices published by Platt's Oilgram News, an internationally recognised publisher of oil prices. The value claimed for the products is SRl 2,474,261,000 or US$ 660,817,356.

80. Saudi Aramco also seeks compensation for the costs of accumulating, storing and delivering fuel and other oil products in the amount of US$ 88,558,502. Saudi Aramco claims that SAMAREC incurred additional operating expenses because it had to meet the requirements of the Saudi Arabian and Allied Coalition Forces as a result of the unlawful invasion and occupation of Kuwait. These additional operating expenses arose from having to increase production, imports, inventory, shipping and deliveries.

81. Saudi Aramco asserts that it has not been paid for the volumes that SAMAREC supplied to the Saudi Arabian and Allied Coalition Forces. Saudi Aramco states that in accordance with a general understanding among the governments principally involved in the Gulf War coalition and in the proceedings of the UNCC, no claim will be made for any loss incurred as part of Saudi Arabia's participation in and support of the Operation Desert Storm. Saudi Aramco outlines various payments made to it relating to the invasion and occupation of Kuwait. However, it asserts that these payments were not related to the supply of fuel and oil products for defensive purposes.

82. Saudi Aramco states that the Allied Coalition Forces initially paid a total of SRl 583,863,000 to SAMAREC for the fuel and products supplied to them by SAMAREC from August 1990 to November 1990. Saudi Aramco claims that these payments were reimbursed to the Allied Coalition Forces effective November 1990 based on the understanding that Saudi Arabia would provide the fuel and products at no cost. Saudi Aramco further states that from 27 January 1991 to 30 March 1991, SAMAREC received payments totalling SRl 1,600,000,000 from the Ministry of Defence and Aviation of Saudi Arabia and the Ministry of Finance of Saudi Arabia. Saudi Aramco claims that

these payments financed purchases of products outside of Saudi Arabia intended for solely offensive military operations in Operation Desert Storm.

B. Analysis and recommendation

83. The Panel's first task is to determine whether the Saudi Aramco claim is one for which compensation may be granted. The Security Council in resolution 687 (1991) states that the Commission will consider only those claims against Iraq for losses that are the direct result of Iraq's invasion and occupation of Kuwait. In more specific terms, Governing Council decision 7, paragraph 21 states that any direct loss, damage, or injury to corporations and other entities is compensable including any loss suffered as a result of:

> "(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;"

84. The Governing Council further narrowed the scope of compensable losses in decision 19 by excluding military costs for the Allied Coalition Forces, providing that:

> "the costs of the Allied Coalition Forces, including those of military operations against Iraq are not eligible for compensation."

85. Saudi Aramco claims that it incurred losses when, at the order of Saudi Arabia, SAMAREC supplied fuel oil and refined oil products for both the Saudi Arabian and Allied Coalition Forces without being paid for such supplies. Accordingly, the Panel must determine whether Saudi Aramco's losses constitute costs of Allied Coalition Forces including those of military operations against Iraq.

86. The Panel notes that Saudi Arabia was a member of the Allied Coalition Forces during the relevant times and that the losses alleged by Saudi Aramco result from Saudi Arabia's and other forces' activities as members of the Allied Coalition Forces. The Panel finds therefore, that the costs incurred by Saudi Aramco regardless of whether they were for offensive or defensive operations, were costs of the Allied Coalition Forces, including those of military operations against Iraq and are specifically declared non-compensable by Governing Council decision 19.

87. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's invasion and occupation of Kuwait and Saudi Aramco's fulfilment of an order by the Saudi Arabian Minister of Petroleum and Mineral Resources.

88. Because the Panel finds that the Saudi Aramco claim is not a compensable claim, it recommends that no compensation be awarded for this claim.

V. CLAIMS OF KUWAIT PETROLEUM CORPORATION

A. Introduction and preliminary findings

89. Kuwait Petroleum Corporation ("KPC") is entrusted by Kuwait with "realising the economic value" of Kuwait's hydrocarbon resources, including the marketing and sale of Kuwait's petroleum and petroleum products.

90. KPC alleges that on 2-3 August 1990, Iraqi military forces took control of Kuwait's oil industry, including the production, processing, refining, transportation, storage and export facilities owned by Kuwait, KPC, and related Kuwaiti oil sector companies.[8]

91. KPC further alleges that, prior to the liberation of Kuwait, Iraqi forces deliberately sabotaged Kuwait's wells and facilities, burning and destroying crude oil and oil products, and releasing crude oil into the Kuwait desert and the waters offshore Kuwait. Because of the damage done to the wells and related oil-producing facilities, KPC maintains that full production of both oil and oil products was not restored to pre-invasion rates until June 1994.

92. KPC makes two claims for losses alleged to result from the damage to its oil producing and processing facilities. First, KPC claims that between 2 August 1990 and the date on which it resumed production at pre-invasion rates it produced 839 million fewer barrels of crude oil than it would have in a no-invasion scenario. KPC requests compensation in the amount of US$ 14,973 million for the net sales revenue it claims KPC and Kuwait would have earned on this lost production. KPC terms this claim, UNCC claim number 4003197, the "production and sales loss" (or "PSL") claim.

93. Second, KPC alleges that the well fires and oil spills resulted in the loss of 1,256 million barrels of reservoir fluids, including crude oil and associated natural gas.[9] KPC seeks compensation in the amount of US$ 6,640,516,049 for the 417 million barrels of lost fluids that are not accounted for in the PSL claim. KPC terms this claim, UNCC claim number 4004439, the "fluid loss" (or "FL") claim.

94. The Panel considers these two claims separately in the following two parts of this report; however, because key elements of each claim are related, the Panel has cross-referenced the discussions where appropriate to avoid unnecessary duplication.

95. KPC files these claims on behalf of itself and Kuwait. The Panel has previously found that consolidated claims such as those presented here are appropriate. See WBC Report, paras. 55-61.

96. KPC alleges that its losses result from two causes: first, Iraq's physical control of Kuwait's oil fields and oil-producing facilities during the period of the invasion and occupation; and, second, the well blow-outs, well fires and oil spills, which KPC alleges were caused by the Iraqi military.

97. In its replies to KPC's claims, Iraq does not seriously challenge KPC's assertion that Iraqi agents physically controlled Kuwait's oil fields and facilities from 2 August 1990 until the liberation of Kuwait, although it does contest KPC's allegations of the effects of that control.

98. In addition, Iraq contends that the damage to Kuwait's oil fields and facilities and any subsequent losses are the result of bombing and other military activities by the Allied Coalition Forces and, therefore, that it is not responsible for this damage.

99. The Panel has previously found, however, that the damage to Kuwait's oil fields and facilities, including the damage alleged by KPC to have caused the claimed losses, did occur and was a direct result of Iraq's unlawful invasion and occupation of Kuwait. See Report and Recommendation Made By the Panel of Commissioners Appointed To Review the Well Blowout Control Claim (S/AC.26/1996/5/Annex) (the "WBC Report"), paras. 85-86.

100. The Panel finds, therefore, that any losses produced by these two causes are a direct result of Iraq's unlawful invasion and occupation of Kuwait and are, to the extent that they are proven by KPC, compensable.

B. The production and sales loss claim

101. The Panel's analysis of the production and sales loss claim is presented below in six sections. Because the structure of this claim is quite complex, the first section summarises the claim and sets forth the background facts and contentions that underlie the remaining discussion. The second and third sections summarise the evidence submitted by the claimant or gathered by the Panel, and Iraq's replies to the claim. In the fourth section, the Panel analyses the legal issues arising out of the claim and records its findings on compensability. The fifth section presents the Panel's findings on its factual verification and valuation of the compensable elements of the claim. The Panel states its recommended compensation in the last section.

1. Facts and contentions

102. KPC alleges that, as a result of Iraq's unlawful invasion and occupation, Kuwait suffered losses of crude oil production and sales revenues due to its "inability to use the oilfields and refineries to produce and sell oil and gas during the period of the illegal occupation; and thereafter the inability to use such property or to use it fully, because of the physical damage inflicted on the oilfields and refineries" by Iraq during its occupation of Kuwait.

103. KPC seeks compensation in the amount of US$ 14,973 million for sales revenues lost as a result of these alleged production and sales losses. The PSL claim is summarised as follows:

Table 6. KPC's production and sales loss claim

Claim element	Claim amount (US$)
Lost revenues	
Crude oil sales loss	3,555,000,000
Refined oil products sales loss	11,900,000,000
Processed gas products sales loss	860,000,000
Refining margin loss	1,032,000,000
Total lost revenue	17,347,000,000
Cost savings	
Cost of sales	(98,000,000)
Production costs	(235,000,000)
Processing fees	(2,022,000,000)
General, marketing and administrative costs	(19,000,000)
Total cost savings	(2,374,000,000)
Total claim amount	14,973,000,000

(a) Structure of the claim

104. As noted in Table 6, *supra*, KPC asserts that it experienced four types of sales revenue losses as a result of the decline in production and processing capabilities.

105. KPC asserts that the occupation of Kuwait and the damage to its oil fields and oil producing facilities prevented it from producing crude oil at expected rates during a production loss period. KPC asserts that this period lasted from 2 August 1990, the date when Iraq took possession of the oil fields and facilities, until December 1992, the month when KPC resumed crude oil production at pre-invasion rates. The lost production could have been sold, KPC alleges, as both crude oil and refined oil products during

the period 2 August 1990 through 30 November 1992. Kuwait requests compensation for its alleged crude oil sales loss in the amount of US$ 3,555 million and for its alleged refined oil products sales loss in the amount of US$ 11,900 million.

106. In addition, KPC asserts that, due to the damage to Kuwait's refineries, even after it resumed crude oil production at pre-invasion rates, it continued to incur losses for a further period of time, during which it was unable to refine crude oil at pre-invasion rates. KPC asserts that, as a result, it experienced a refining margin loss during the period from 1 December 1992 through 30 June 1994.

107. Finally, KPC asserts that its inability to extract and process the associated natural gas resulted in a processed gas products loss during the period from 2 August 1990 through 31 July 1993.

108. To calculate the loss amounts, KPC first estimates the sales revenue it would have earned during the relevant loss period had the invasion and occupation not occurred. To do this, KPC estimates the volume of crude oil, refined oil products and processed gas products that it would have produced and sold during the relevant loss periods.

109. KPC next projects the prices at which the lost sales would have occurred. In order to do so, it employs four different types of prices. As discussed in greater detail below, KPC employed certain "no-invasion" prices (the "no-invasion prices") to value losses that occurred from 2 August 1990 through 31 January 1991. Losses occurring between 1 February 1991 and 31 December 1993 are valued with two types of prices. KPC employs actual sales prices (the "actual sales prices") to value losses incurred during periods in which it was able to sell reduced quantities of crude oil, refined oil products or processed gas products. Losses incurred during periods in which no actual sales occurred are valued with market prices (the "actual market prices"). Finally, because the PSL claim was filed in early 1994, KPC employs projected market prices (the "projected market prices") to value those refining margin losses that it expected would occur from 1 January 1994 through 30 June 1994.

110. KPC claims that Iraq's invasion and occupation of Kuwait caused the market prices of crude oil, gas and refined oil products to increase significantly from their pre-invasion levels. As a result, abnormally high oil prices prevailed between 2 August 1990 and February 1991.

111. Because the price increases would not have occurred if Iraq had not invaded Kuwait, KPC states that use of the higher actual market prices to value the revenues lost between 2 August 1990 and February 1991 would result in an overstatement of its losses. Therefore, KPC employs the no-

invasion prices, which it claims represent the market prices that would have prevailed if Iraq had not invaded Kuwait, to calculate the part of its lost revenues that occurred during the period 2 August 1990 to February 1991.

112. KPC retained the services of a firm of consultants with expertise in the field of petroleum economics (the "KPC price consultants") to estimate the no-invasion prices.

113. In a report attached to KPC's claim, the KPC price consultants state that Iraq's invasion of Kuwait and the United Nations trade embargo caused the withdrawal of Iraq and Kuwait from the international oil market, which resulted in a decrease in production and refining. This caused fears of supply shortages and a dramatic, if temporary, increase in oil prices.

114. In response to these events, certain OPEC members with spare production capacity increased their production of crude oil and its products. This caused oil prices to return, in February 1991, to the levels which, the KPC price consultants opine, would have obtained if the invasion had not occurred.

115. Therefore, the KPC price consultants assert that Iraq's invasion and occupation of Kuwait caused abnormally high prices for crude oil and its products from 2 August 1990 through 31 January 1991 (the "price increase period").

116. Having determined the period during which oil prices varied from their normal levels, the KPC price consultants estimated the no-invasion prices. In the case of Kuwait Export Blend, the crude oil sold by KPC, they opine that the approximate average price during July 1990, US$ 13.90 per barrel, would have, assuming a smooth price transition, prevailed until February 1991. No-invasion prices for refined oil products and processed gas products are calculated with reference to the crude oil no-invasion prices, demand and supply data with respect to the relevant products and data concerning their refining and transportation costs.

117. As stated at para. 109, supra, KPC employs actual sales prices and actual market prices to value losses that occurred from 1 February 1991 through 31 December 1993 and projected market prices in the case of losses that occurred in 1994.

118. KPC then adjusts all prices other than the actual sales prices for certain historical price differentials (the "price differentials") between market prices and prices charged to KPC's customers before employing them to calculate its lost revenue. These adjustments are required because KPC usually sells crude oil, refined oil products and processed gas products at

a premium or discount to their market prices. As stated at para. 109, supra, KPC employs actual prices charged to purchasers to calculate revenues lost during periods for which sales were made and data are available.

119. KPC also estimates the quantity of crude oil that would have been refined into refined oil products during the period from 1 December 1992 through 30 June 1994 if Kuwait's refining facilities had not been damaged.

120. KPC uses these production volume estimates and the relevant prices to calculate the revenue it would have earned from the sale of each product but for Iraq's invasion and occupation of Kuwait.

121. KPC resumed limited production as early as November 1991. Therefore, it produced, processed and sold approximately 332 million barrels of crude oil during the remaining production loss period. From the no-invasion revenue estimate, KPC subtracts the actual sales revenues earned on the sales of crude oil, refined oil products and processed gas products that were produced from these 332 million barrels.

122. KPC finally makes deductions for costs savings realised. KPC considers only the following categories of costs to determine KPC's cost savings: KPC cost of sales, KOC production costs, KNPC processing fees and KPC general, marketing and administrative costs. In the KPC accountants' report, the accountants identify each cost category, provide a general breakdown of each such category, and identify where cost savings are made. The KPC accountants estimate the no-invasion costs for each category of cost and compare them to the actual costs incurred to arrive at the amount of each cost saving.

123. Because KPC is claiming on behalf of itself and Kuwait (through Kuwait's Ministry of Oil), KPC ignores the cost of purchasing crude oil and gas from the Ministry of Oil. The effect of this action is discussed at para. 244, infra.

124. Further, KPC makes no deductions for the value of the crude oil and gas not produced, because it alleges that the 839 million barrels of crude oil at issue in this claim were destroyed as a result of the invasion and occupation of Kuwait.

(b) Lost revenues

(i) Crude oil and refined oil products sales loss

125. As the first step, KPC estimates the amount of crude oil and refined oil products that it would have produced from 2 August 1990 through 30

November 1992, as KPC claims it was able to return to pre-invasion daily production rates in December 1992.[10]

126. Kuwait is a member of the Organisation of Petroleum Exporting Countries ("OPEC"), which from time to time establishes a crude oil production ceiling for its members. An individual member's share of the OPEC production ceiling is often referred to as its "quota." At the time of the invasion, Kuwait's OPEC crude oil production quota was 1.5 million barrels per day ("bpd"). Arguing that the quota represents Kuwait's minimum production in a no-invasion scenario, KPC estimates that Kuwait could have produced a base amount of at least 1.5 million bpd of crude oil from 2 August 1990 through 30 November 1992 (852 days), amounting to 1,278 million barrels of total no-invasion production.

127. As discussed in Chapter III, supra, AOC produces crude oil in the offshore PNZ under concessions from Kuwait and Saudi Arabia. Fifty per cent of AOC's production is attributed to Kuwait's OPEC quota. Thus, to determine KPC's no-invasion production, KPC subtracts 107 million barrels, which it alleges is one-half of AOC's production in the offshore PNZ, from the base production amount of 1,278 million barrels, and arrives at a total no-invasion production for KPC of 1,171 million barrels through 30 November 1992. KPC estimates AOC's production by adding AOC's actual production during the loss period to AOC's claimed production and sales loss during AOC's claimed loss period.

128. KPC estimates that 706 million of the 1,171 million barrels of total no-invasion production would have been processed and sold as refined oil products. KPC asserts that the remaining 465 million barrels would have been sold as crude oil.

129. KPC requests compensation in the amount of US$ 3,555 million for the crude oil sales that it would have made from 2 August 1990 through 30 November 1992. KPC calculates this amount as US$ 7,005 million in no-invasion revenue less US$ 3,450 million in actual revenue earned during the loss period.

130. KPC requests compensation in the amount of US$ 11,900 million for the refined oil product sales that it would have made from 2 August 1990 through 30 November 1992. KPC calculates this amount as US$ 14,399 million in no-invasion revenue less US$ 2,499 million in actual revenue earned during the loss period.

(ii) Processed gas products sales loss

131. In addition to the crude oil and refined oil products, KPC alleges that it would have extracted the associated natural gas from the crude oil

it would have produced in a no-invasion scenario, processed this gas, and sold it as processed gas products. KPC asserts that it was unable to extract gas products from its crude oil production at pre-invasion levels due to damage to its processing facilities. KPC's claim involves three processed gas products that it was unable to produce and sell at pre-invasion rates from 2 August 1990 through April 1993 (propane), June 1993 (lean gas) and July 1993 (butane).

132. KPC requests compensation in the amount of US$ 860 million for lost sales of processed gas products.

(iii) Refining margin loss

133. As noted, even after crude oil production resumed fully by 1 December 1992, KPC asserts that the damage to Kuwait's oil processing and refining facilities continued to cause losses, because it remained unable to refine oil at pre-invasion rates. Because the profit margin on crude oil is smaller than the profit margin on refined oil products, KPC claims that its reduced refining capacity resulted in a refining margin loss of US$ 1,032 million, incurred during the period from 1 December 1992 through 30 June 1994.

(c) Cost savings

134. KPC presents four cost saving elements in its claim: cost of sales, production costs, processing fees and general, marketing and administrative costs. KPC claims that the majority of its cost savings resulted from not having to pay production costs to Kuwait Oil Company ("KOC") and processing fees to Kuwait National Petroleum Corporation ("KNPC") during the loss period. KPC discusses both of these cost savings separately from its cost of sales. Note that KPC uses the term "cost of sales" in the claim specifically to refer to the cost of oil purchased from Kuwait, the processing fees for overseas refineries, the cost of oil and gas purchased from third parties and the cost of freight and insurance.

(i) Cost of sales

135. In an element it labels "cost of sales," KPC asserts that it realised savings solely on the processing fees that would have been paid to overseas refineries. These fees include refining fees, freight, insurance and other marine costs with respect to crude oil that would have been sent to overseas refineries for refining. The KPC accountants' report filed with the PSL statement of claim explains why there are no other cost savings under this category of cost and proposes a deduction of US$ 98 million from the claim to account for saved processing fees for overseas refineries.

(ii) Production costs

136. In an element it labels "production costs," KPC states that it realised savings on KOC production costs of US$ 235 million, and deducts this amount from its total claim amount. KPC limits the period of production cost savings based on the dates that production of crude oil and gas were restored to no-invasion rates, in December 1992 and July 1993, respectively. KPC makes certain adjustments on depreciation and car leasing costs to arrive at the amount of production cost savings.

(iii) Processing fees

137. In an element it labels "processing fees," KPC states that it realised savings on KNPC processing fees of US$ 2,022 million. KPC deducts this amount from the total lost revenue amount. KPC relies on the calculations in a report made by another consultant hired by KNPC ("the KNPC Report"). The KNPC Report is a report submitted with a claim by KNPC to the UNCC for lost profits.[11] KPC assumes that the calculations are correct and makes cost savings deductions based on KNPC's calculations.

(iv) General, marketing and administration costs

138. KPC states that it made savings on marketing, general and administrative costs of US$ 19 million. KPC deducts this amount from the total lost revenue amount. KPC provides a breakdown of these costs and adjusts these costs for depreciation, exceptional costs and inflation. There are no deductions for salaries, as KPC claims that it continued to pay these salaries at the normal rate during Iraq's occupation of Kuwait.

2. Evidence presented in support of the claim

139. KPC initially submitted a number of statements and evidence in support of its claim, including the following:

(a) A statement of claim.

(b) Audited financial statements for the years 1989 through 1992.

(c) A report prepared by KPC's accountants (the "KPC accountants' report") identifying and quantifying the loss.

(d) A report prepared by the KPC price consultants, setting forth projected no-invasion prices for the crude oil, refined oil products and processed gas products sold by KPC.

(e) The supporting calculations prepared for the KPC accountants' report, contained in several appendices to that report.

(f) A statement by OPEC in a press release regarding Kuwait's quota.

(g) Various witnesses' statements regarding factual elements of the claim and authenticating certain accounting documents.

140. KPC's initial submission contains, however, almost no underlying financial, accounting or other documents. In fact, KPC specifically states that the documents submitted with the claim are "by no means" all of the supporting evidence.

141. The Panel, aided by the secretariat and the Panel's expert consultants, undertook an investigation of the evidence. This investigation lasted over one year and involved dozens of interviews, numerous formal questions and requests for documents, the review of voluminous documentary evidence, several on-site inspections, and a formal oral proceeding.

142. As a result of this investigation, the Panel has determined that a number of claim elements are fully supported by underlying financial and accounting records or other evidence. Where a claim element is not supported by such evidence, the Panel has disallowed the element in whole or in part.

3. Iraq's responses

143. The Panel was assisted by some of the responses to the PSL claim filed by the Government of Iraq. These responses can be grouped into four categories, as discussed in the following paragraphs.

144. First, a few of Iraq's written submissions, and all of its oral presentation, concerned such matters as the Commission's authority to process claims and award compensation, and the propriety of the Rules and the Commission's procedures. It is the Panel's view that the majority of these matters should be addressed to either the Governing Council or the Security Council, and not to a Panel of Commissioners. The remaining procedural objections have been adequately addressed in the Panel's previous reports.

145. Second, Iraq challenges certain factual assertions in the claim. Iraq challenges the authority of KPC to claim on behalf of Kuwait. It argues that the well blow-outs were not caused by Iraqi actions and, therefore, that Iraq cannot be held responsible for the damages caused thereby. Iraq further argues that the revenue losses caused by the invasion and occupation are indirect and not compensable. Iraq maintains that Kuwait was negligent in its management of repairs, thus prolonging

unnecessarily the loss periods in the claim. These objections have been considered and rejected previously by the Panel in the second instalment of E1 claims. See E1 Second Instalment Report, paras. 94-99.

146. Third, Iraq generally challenges the quantity and quality of the evidence presented by KPC in support of its claim. Iraq urges the Panel to request underlying financial and accounting documents and other evidence and to require verification of reports prepared for the claimant by its consultants. In particular, Iraq requests that the Panel verify the key production data in the claim. In this report, the Panel notes the considerable amount of supporting evidence that it has required the claimant to produce and which the claimant has, in fact, produced.

147. Fourth, Iraq raises certain objections particular to the PSL claim.

(a) Iraq argues that Kuwait benefited from an increase in its OPEC quota after the liberation and, therefore, that Kuwait's increased revenues should be offset against the claim. Although it does not so state, it appears that Iraq contends that the increased OPEC quota was possible as the result of restrictions on Iraq's oil exports imposed by Security Council resolution 661.

(b) Iraq also argues that KPC has failed to disclose certain revenues that it received during the loss period. For example, Iraq asserts that Kuwait's overseas subsidiaries profited from the general increase in petroleum prices that immediately followed the invasion. Iraq requests that these revenues be offset against the claim amount.

(c) Although it agrees that no-invasion prices should be used, Iraq maintains that KPC's no-invasion prices employed to value any losses related to the sale of crude oil and oil products are too high.

148. Iraq's legal arguments and factual contentions will be considered below in the Panel's legal and factual analysis of the claim.

4. Compensability and measurement of losses

(a) Compensability

149. KPC argues that its claimed losses result "from the inability to use the oilfields and refineries to produce and sell oil and gas during the period of the illegal occupation; and thereafter the inability to use such property or to use it fully, because of the physical damage inflicted on the oilfields and refineries" by Iraqi forces. KPC also contends that the loss of revenue from production and sales of oil "was an inevitable consequence of Iraq's actions ... in sabotaging the wellheads in all of the producing oilfields in Kuwait and setting the oilfields ablaze."

150. KPC maintains that these lost revenues are direct losses - and thus compensable - pursuant to Governing Council decision 7, paragraph 21, which states that compensable losses include losses resulting from:

> (i) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; ... [and]
>
> (ii) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion and occupation.

151. The Panel finds that KPC has correctly stated the relevant rules regarding compensability of the losses alleged in the PSL claim.

152. Applying these rules, the Panel has previously found that the damage to Kuwait's oilfields and related facilities, which is the sole alleged cause of the losses in the PSL claim, was the direct result of Iraq's invasion and occupation of Kuwait. See WBC Report, paras. 85-86.

153. The Panel now finds that KPC's capacity to produce and sell oil was, as KPC alleges, drastically reduced for a certain period and that this reduced capacity was the direct result of the invasion and occupation of Kuwait and the subsequent well blow-outs and damage to Kuwait's oilfields and related facilities.

154. Therefore, the Panel finds that, to the extent that the losses alleged by KPC are proved by the evidence, they are compensable under Security Council resolution 687 and Governing Council decision 7. The proper standard of compensation is discussed at paras. 160-166, infra.

(b) Evidence

155. KPC submits in support of the PSL claim a number of reports prepared by its accountants and its price consultants. KPC relies heavily on these reports and projections in stating the quantum of its claim. Iraq has

challenged this reliance, asserting that the consultants were hired by KPC and, therefore, cannot be relied on to produce an independent verification of the claim.

156. Article 35(1) of the Rules provides general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

157. Article 35(3) states the standard of evidence required for corporate, government and international organization claims, noting that such claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss."

158. The Panel has previously found that article 35(3) does not impose any formal requirements on the type of evidence presented by claimants, but rather directs the Panel to consider whether such evidence is appropriate. See E1 Second Instalment report, para. 97.

159. Based on this finding, therefore, the Panel finds that KPC may submit and rely on its consultants' reports. The evidentiary value of the consultants' reports, however, depends on whether the reports are shown to be based on underlying financial and accounting records or other evidence that establish the circumstances and amount of the claimed loss. And, as noted throughout this report, the Panel has uniformly required that evidence in support of each element of the claim be produced.

(c) Measurement of lost profits

160. KPC asserts that the proper standard of compensation for the losses resulting from the interruption of its oil production is the projected lost profits from the production and sales of oil that it estimates it would have made in the claimed loss period.

161. The Panel has previously determined that the Governing Council has limited the compensation available in business interruption claims before the Commission. The Governing Council states in decision 9, paragraph 19 that:

> "The method of valuation should ... be one that focuses on past performance rather than on forecasts and projections in the future.

> Compensation should be provided if the loss can be ascertained with reasonable certainty based on prior earnings or profits."

162. The approach advocated by KPC is one of estimating lost revenues based on an historical level of production and on historical production and processing costs. The Panel finds that KPC's use of historical production and cost figures is consistent with Governing Council decision 9.

163. As the Panel is considering the entire Kuwaiti oil sector as one enterprise, the internal transfer price paid between the various entities or operations is irrelevant.

164. Because oil prices were temporarily driven higher as a result of the invasion, KPC acknowledges that use of actual prices during the loss period might over-compensate it. KPC's claim is calculated, therefore, using prices for crude oil, refined oil products and processed gas products, which KPC alleges would have prevailed in a no-invasion scenario.

165. The Panel finds that it is reasonable to use projected prices in order to avoid over-compensation, if such prices are based on relevant and reasonably ascertainable historical data, such as demand and supply trends for the loss period. KPC's no-invasion prices are discussed at paras. 179-190, *infra*.

166. The Panel therefore finds that the methods employed by the claimant in the PSL claim to calculate the revenues lost by KPC and Kuwait are acceptable to the extent that such methods are properly employed using accurate historical information.

(d) *Extraordinary profits*

(i) *Additional production after liberation*

167. The United Nations trade embargo that was imposed pursuant to Security Council resolution 661 (1990) as a result of Iraq's invasion and occupation of Kuwait severely restricted Iraq's ability to export crude oil, gas and refined oil products. As stated at para. 114, *supra*, the decrease in supply of Iraqi and Kuwaiti oil was offset, beginning soon after Iraq's invasion of Kuwait, by increases in production on the part of certain other OPEC members with spare production capacity.

168. In its reply to the PSL claim, Iraq argues that, after its liberation, Kuwait was among the countries which, due to Iraq's absence from the market, were able to produce more crude oil than they would have if the invasion had not occurred. As a result, KPC earned extraordinary profits that exceeded the losses claimed by KPC in the PSL claim. Therefore, Iraq claims, KPC should receive no compensation with respect to the PSL claim.

169. The Panel notes that the objective of any award of compensation with respect to KPC's claim is to place the claimant in the same position in which it would have been if its oil sector sales had not decreased as a result of Iraq's invasion and occupation of Kuwait.

170. If Iraq's absence from the crude oil market, which resulted from its invasion and occupation of Kuwait, allowed KPC to earn extraordinary profits from the production of crude oil, the Panel finds that it should consider whether such profits should be offset against its claim.[32] Therefore, it is necessary for the Panel to determine whether KPC produced and sold more crude oil in the years that followed Kuwait's liberation than it would have in a no-invasion scenario and, if so, whether Iraq's invasion and occupation of Kuwait was a direct cause of such increase.

171. In order to consider this and certain related issues, the Panel retained the services of a firm of petroleum economics consultants with an international reputation. With the assistance of such consultants, the Panel reviewed data with respect to crude oil production, production capacity, and world demand prior to and after Iraq's occupation of Kuwait. These data show that Kuwait's production of crude oil increased from 1.8 million bpd in 1989 to 2.03 million bpd in 1994.

172. However, the production data reviewed by the Panel also show that Kuwait's average share of actual OPEC crude oil production between 1991 and 1998 did not exceed its average share of actual OPEC production either during the year that preceded Iraq's invasion of Kuwait or during the five calendar years that preceded the invasion. Moreover, the Panel finds that, because its pre-invasion production capacity exceeded its post-liberation production, Kuwait's share of production would not have been likely to decrease in a no-invasion scenario.

173. The Panel finds, therefore, that there is no evidence which indicates that the increase in absolute terms of Kuwait's production was a direct result of Iraq's absence from the market or of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that there is no need to make a deduction for extraordinary profits from KPC's claim.

(ii) Profits from foreign operations

174. Iraq also alleges that KPC profited from the increase in oil prices that resulted from Iraq's invasion of Kuwait through its overseas operations. Iraq asserts that this profit should be set off against KPC's claims so that KPC does not benefit from the occupation of Kuwait.

175. KPC maintains that all revenues from the production and sale of crude oil that it earned during the loss period have been deducted from the PSL claim. KPC transferred certain operations from Kuwait to its London branch office during Iraq's occupation of Kuwait. However, KPC asserts that neither its London branch nor any of its overseas subsidiaries earned extraordinary profits as a result of the increase in oil prices.

176. The Panel requested and reviewed relevant accounting information with respect to both KPC's overseas subsidiaries and KPC's operations abroad.

177. The Panel finds that there is no evidence that KPC earned any profits from its existing stocks of crude oil resulting from the petroleum price increase during Iraq's occupation of Kuwait or from any other source through its overseas subsidiaries. Further, the Panel finds that KPC's overseas operations during the occupation consisted of collecting debts that arose prior to the Iraqi invasion.

178. Accordingly, the Panel finds that there is no evidence that KPC did not disclose profits earned outside Kuwait as a result of the increase in oil prices.

(e) No-invasion prices

179. As described at paras. 108-118, supra, KPC employs no-invasion prices, adjusted for relevant price differentials, to value part of its claimed revenue losses. The no-invasion prices are oil prices that, in KPC's opinion, would have prevailed from 2 August 1990 through 31 January 1991 if Iraq's invasion and occupation of Kuwait, and the fears of supply shortages that followed it, had not occurred. KPC claims that, due to increases in oil production, the effect of the Gulf war conflict on oil prices ended in February 1991. Therefore, KPC employs no-invasion prices to value losses that occurred during the price increase period and, for the subsequent periods, uses adjusted actual or projected market prices or, when available, prices actually charged by KPC to purchasers.

180. KPC states that, assuming a smooth price transition, the price of Kuwait Export Blend would have been approximately US$ 13.90 per barrel during the price increase period. This price approximates the actual

average market price of Kuwait Export Blend during July 1990, the month that preceded Iraq's invasion of Kuwait.

181. No-invasion prices for refined oil products and processed gas products were calculated with reference to the crude oil no-invasion price, demand and supply data with respect to the relevant oil and gas products, and data concerning their refining and transportation costs.

182. In its reply to the PSL claim, Iraq contends that, because of an oversupply of crude oil prior to the invasion of Kuwait and the tendency of certain OPEC members to exceed their OPEC production quota allocations, oil prices would have fallen after the date of Iraq's invasion of Kuwait. Iraq claims that the prices employed by KPC overstate the prices that would have prevailed if the invasion and occupation of Kuwait had not occurred.

183. As noted at para. 166, supra, the Panel believes that KPC's claimed loss should be measured with reference to the profits that it would have earned from its production and sales operations if Iraq had not invaded Kuwait. Therefore, the Panel finds that the prices to be employed to calculate KPC's losses should approximate with the greatest possible degree of accuracy those that would have prevailed on world markets if the invasion of Kuwait had not occurred.

184. Based on its review of market data for the relevant period, the Panel finds that the invasion and occupation of Kuwait caused a temporary rise in oil prices. In addition, the Panel finds that KPC correctly stated that, due to increases in production by OPEC members with spare production and refining capacity, such prices returned to the levels that would have prevailed if the invasion had not occurred in early February 1991. Therefore, the Panel agrees that projected no-invasion prices should be employed to value losses that occurred during the price increase period.

185. Accordingly, the Panel has considered, with the assistance of its petroleum economics consultants, whether the no-invasion prices overstate the prices that would have prevailed during the price increase period if the invasion had not occurred.

186. In considering crude oil prices, the Panel reviewed certain price forecasts prepared prior to Iraq's invasion of Kuwait; demand and supply trends; production and transportation costs; and other relevant data with respect to the period over which KPC's claimed losses were incurred. In addition, the Panel instructed the secretariat and its petroleum economics consultants to interview KPC's petroleum economics consultants and review the latter's working papers concerning the estimation of no-invasion prices. The Panel has reviewed the results of this exercise.

187. Based on this review, the Panel finds that, even if Iraq had not invaded Kuwait, world demand for oil would most likely have increased after 2 August 1990. This development would have resulted in an increase in oil prices unless it had been accompanied by a sufficiently large increase in the supply of oil. Based on the data it has reviewed, the Panel concludes that, while in a no-invasion scenario the supply of crude oil would have increased in response to the rise in demand, it would not have done so by an amount sufficient to cause crude oil prices to fall below their pre-invasion levels. Therefore, the Panel finds that KPC has not overstated the crude oil prices that would have prevailed if the invasion had not occurred.

188. In the case of refined oil products and processed gas products, the Panel believes that KPC has employed an appropriate methodology to determine the no-invasion prices for refined oil products and processed gas products.

189. In addition, the Panel has reviewed relevant market data with respect to refined oil products and processed gas products during the loss period. As in the case of crude oil, the Panel concludes, based on this review, that if Iraq had not invaded Kuwait, demand for the relevant refined oil products and processed gas products would likely have increased during the loss period. During the same period the supply of the relevant oil and gas products also would have increased, although not by an amount sufficient to decrease prices to levels lower than the relevant no-invasion prices provided by KPC.

190. The Panel therefore concludes that the use of KPC's no-invasion prices to value losses that occurred during the price increase period does not lead to an overstatement of such losses. In addition, the Panel finds that KPC has correctly stated the actual market prices that prevailed after the price increase period, and that these can be employed to value losses occurring during subsequent periods when no relevant actual sales data are available.

5. Factual analysis of the claim

191. The Panel divides its analysis of the claim into two sections: first, a review of the claimed losses of sales revenues and second, a review of the cost savings that the claimant proposes to deduct from the lost revenue amounts to reach the claim amount.

192. In the discussion on lost revenues, for each of the four claimed sales loss elements of the PSL claim, the Panel presents the results of its inquiries into the volume of the loss and the valuation of that loss. For each sales loss element, the Panel first discusses how the claimant defines

the loss period and estimates the lost production volume that it claims to have experienced over that loss period. The Panel then considers the claimant's valuation of the claimed sales loss. The Panel's findings regarding the claimed sales losses in the PSL claim are presented in Tables 8, 10 and 12, at the end of the section on loss of sales revenues.

193. In a separate section, the Panel then presents its findings on the cost savings experienced by the claimant. These findings are presented in Table 14, at the end of the cost savings section.

(a) Lost revenues

194. As shown in Table 6, KPC claims that it lost four types of sales revenues as a result of its inability to produce, process and refine crude oil. KPC alleges a loss of sales of crude oil during the period 2 August 1990 through 30 November 1992. KPC also alleges a loss of sales of refined oil products during the same period. Because of the factual relationship between these two loss elements, they are discussed in one section. In addition, KPC alleges a loss of sales of the processed gas products that would have been extracted from its crude oil during the period 2 August 1990 through 31 July 1993. KPC also alleges that its inability to refine the crude oil production extended beyond the resumption of crude oil production thus causing a loss of refinery margins during the period 1 December 1992 through 30 June 1994. The Panel presents the results of its verification of each of these claimed losses below.

(i) Crude oil and refined oil products sales loss

195. KPC's basic allegations regarding the volume of production lost are summarised at paras. 125-128, *supra*.

Table 7. Claimed lost revenue from sales of crude oil and refined oil products

Claim element		Claim amount (US$)
Crude oil sales loss		
No-invasion revenue		7,005,000,000
Actual revenue		(3,450,000,000)
Sub-total for crude oil sales loss (see Table 6)		3,555,000,000
Refined oil products sales loss		
No-invasion revenue from product:*		
Refined in Kuwait	14,131,874,331	
Refined outside Kuwait	267,125,669	14,399,000,000
Actual revenue from product:		
Refined in Kuwait	(2,499,000,000)	
Refined outside Kuwait	0	(2,499,000,000)
Sub-total for refined oil sales loss (see Table 6)		11,900,000,000
Total crude and refined oil sales claim		15,455,000,000

*KPC does not separate in the claim the revenue amounts earned on crude oil refined in Kuwait from that refined outside Kuwait. Because these figures are relevant to the Panel's analysis, the Panel has used the KPC accountants' report to determine these figures.

a. Volume of crude oil not produced

196. In verifying the volumes of KPC's lost crude oil production, the Panel first reviewed KPC's pre-invasion production data and OPEC documentation, and found that Kuwait would have produced, at a minimum, 1.5 million bpd, equivalent to 1,278 million barrels of production over the 852 days from 2 August 1990 through 30 November 1992.

197. KPC subtracts 107 million barrels from the 1,278 million barrel figure to account for AOC's estimated total no-invasion production, resulting in 1,171 million barrels. The Panel reviewed AOC's production data in the offshore PNZ and AOC's claim documents. Based on this evidence, the Panel finds that KPC has understated AOC's no-invasion production by approximately 4 million barrels.[31] After this adjustment, the Panel finds that AOC's share of Kuwait's production quota would have been 111 million barrels had the invasion not occurred.

198. After adjusting KPC's calculations to allow for its understatement of AOC's production, the Panel finds that KPC would have produced at least 1,167 million barrels of crude oil during the loss period if the invasion had not occurred. Note that this overstatement of its claim requires two adjustments to account for the lower volume of crude oil and the lower volume of associated natural gas that would have been extracted from this

crude oil. These adjustments are discussed more fully at paras. 214 and 233, infra.

199. In its claim, KPC argues that it actually produced 332 million barrels of crude oil during the production loss period. Based on a review of KPC's actual production data, the Panel finds that KPC's actual production during the loss period was in fact 332 million barrels. Deducting these 332 million barrels from the 1,167 million barrels mentioned in paragraph 198 above, the Panel finds that KPC lost crude oil production of at least 835 million barrels from 2 August 1990 through 30 November 1992.

b. Sales mix between crude oil and refined oil products

200. From the no-invasion production of 1,171 million barrels, KPC asserts that it would have sold 465 million barrels as crude oil and 706 million barrels as refined oil products. The refined oil products volume estimate is composed of 659 million barrels that KPC alleges would have been refined at refineries in Kuwait and 47 million barrels that it alleges would have been refined outside Kuwait.

201. KPC uses historical data to project this sales mix. KPC assumes in its calculations that it would have fully utilised its refining capacity for two reasons. First, KPC obtains higher prices for refined oil products, and second, KPC's refinery costs are mainly fixed, i.e. they do not vary with the amount of oil refined.

202. Based on a review of the evidence submitted, the Panel finds that the proportion of crude oil and refined oil products sold by KPC is largely dependent on KPC's refining capacity.

203. The Panel reviewed KPC refinery schedules that indicate the frequency of shutdowns and throughput of all the refineries in Kuwait prior to and after the invasion. Based on this evidence, the Panel concludes that KPC has correctly estimated the volumes of refined oil products that it would have refined in Kuwait in a no-invasion scenario. Accordingly, the Panel finds that KPC would have refined 659 million barrels of crude oil in Kuwait during the loss period.

204. KPC claims that 47 million barrels of crude oil would have been refined in overseas refineries during the loss period. Although there is some evidence that KPC made arrangements to refine oil in overseas refineries, despite repeated requests for further information, KPC could prove neither the actual volume of crude oil that was sent for refining overseas nor where it was refined prior to the invasion. The Panel finds therefore that KPC has not provided evidence sufficient to prove this

element of the claim. After the Panel completed its review process, KPC submitted further documents that it asserts relate to this element of the claim. Because these documents were submitted after the Panel's work was completed, the Panel has not considered them.

205. Therefore, of the 706 million barrels that KPC alleges would have been sold as refined oil products, in the valuation section of the report, the Panel will value only 659 million barrels as refined oil products. The compensation for the remaining 47 million barrels of this claim element will be based on the price of crude oil rather than on the higher refined oil products price claimed by KPC. The Panel will accomplish this by deducting the net refining margin claimed for the 47 million barrels from the refined oil products claim amount.

206. For the sales of crude oil claim element, the Panel finds that the total proven amount is approximately 461 million barrels, instead of 465 million barrels. This figure is the remainder after the 706 million barrel refined oil products element and a 4 million barrel error made by KPC in estimating AOC's no-invasion production are deducted from the 1,171 million barrels of claimed total KPC production.

c. Valuation of crude oil and refined oil products sales loss

207. KPC's basic allegations regarding the valuation of the crude oil and refined oil products sales losses are summarised at paras. 125-130, supra.

i. Sales of crude oil

208. KPC claims that it would have earned US$ 7,005 million in no-invasion revenue from sales of crude oil from 2 August 1990 through 30 November 1992 on 465 million barrels of crude oil production.

209. The Panel finds that the loss period used by KPC to estimate its lost crude oil sales revenue does not overstate the length of time during which KPC could not earn crude oil sales revenue at pre-invasion levels.

210. As discussed at para. 109, supra, KPC employs three categories of prices to estimate the lost crude oil revenues. In the case of losses occurring during the price increase period, KPC employs no-invasion prices adjusted for relevant price differentials. In the case of losses occurring after the price increase period, KPC employs actual market prices adjusted for relevant price differentials when no actual sales data were available. Losses occurring during periods when KPC was able to sell crude oil were valued at actual sales prices.

211. The Panel has already found, at para. 190, supra, that KPC's no-invasion and actual market prices are not overstated. In addition, the Panel finds that the actual sales prices employed correspond to the prices at which KPC made the relevant actual crude oil sales.

212. KPC calculates the above price differentials based on its actual sales of crude oil during the six months ended 30 June 1990. From a review of KPC's sales contracts, the Panel finds that the price differentials employed by KPC do not lead to an overstatement of KPC's lost sales revenue.

213. KPC deducts US$ 3,450 million in crude oil revenue that it claims it earned from 2 August 1990 through 30 November 1992. Based on KPC's accounts and their underlying documents, the Panel has verified that this deduction accurately reflects the actual revenue earned by KPC on crude oil sales during this period.

214. In addition, as noted above, KPC's 4 million barrel overstatement in the volume of crude oil not produced requires an adjustment to the crude oil sales loss element. The Panel therefore makes a further deduction of US$ 51,402,955 to account for the overstatement, which is calculated by applying the verified crude oil prices to the overstated volume.

215. Accordingly, the Panel recommends compensation of US$ 3,503,597,045 for the crude oil sales loss claim element.

ii. Sales of refined oil products

216. KPC claims that it would have earned US$ 14,399 million in no-invasion revenue from the sales of refined oil products from 2 August 1990 through 30 November 1992. KPC claims that it would have earned this no-invasion revenue from 706 million barrels of refined oil products.

217. The Panel finds that the loss period used by KPC to estimate its lost refined oil product sales revenue does not overstate the length of time during which KPC could not earn refined oil product sales revenue at pre-invasion levels.

218. As discussed at para. 109, supra, KPC employs three categories of prices to estimate the lost refined oil product revenue. In the case of losses occurring during the price increase period, KPC employs no-invasion prices adjusted for relevant price differentials. In the case of losses occurring after the price increase period, KPC employs actual market prices adjusted for relevant price differentials when no actual sales data were available. Losses occurring during periods when KPC was able to sell refined oil products were valued at actual sales prices. Because there are

different types of refined oil products with different prices, KPC calculates the weighted average of the prices of each refined product according to the sales proportion of each refined product during the year ended 30 June 1990 and the different markets in which they were sold.

219. The Panel has already found, at para. 190, supra, that KPC's no-invasion and market prices are not overstated. In addition, the Panel finds that the actual sales prices correspond to the prices at which KPC made relevant actual refined oil products sales.

220. KPC calculates the above price differentials based on its actual sales of refined oil products during the six months ended 30 June 1990. From a review of KPC's sales contracts, the Panel finds that the price differentials employed by KPC do not lead to an overstatement of KPC's lost sales revenue. The Panel also reviewed KPC's sales data, which show the historical sales proportion of each refined product. The Panel is satisfied that KPC's estimate of the sales proportion does not overstate KPC's lost sales revenue.

221. KPC deducts actual revenue of US$ 2,499 million that it claims it earned from the actual sales of refined oil products from 2 August 1990 to 30 November 1992, inclusive. The Panel has verified that this deduction accurately reflects the actual revenue earned by KPC on refined oil product sales during this period.

222. As noted, however, the Panel finds that only 659 million barrels of the 706 million barrels alleged in this claim element would have been sold as refined oil products; the remaining 47 million barrels would have been sold as crude oil. Therefore, the Panel makes a further deduction of US$ 267,125,669 million to account for the 47 million barrels, which the Panel finds should be priced at crude oil prices instead of refined oil product prices. This deduction is calculated by applying the difference between the relevant refined oil product and crude oil prices to the 47 million barrel volume. Accordingly, the Panel recommends compensation in the amount of US$ 11,632,874,331 for the refined oil products sales loss claim element.

223. Based on its foregoing findings in paras. 215 and 222, supra, the Panel finds that KPC's lost revenue from sales of crude oil and refined oil products is US$ 15,136,471,376.

Table 8. Panel's findings on lost revenue from sales of crude oil and refined oil products

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Crude oil sales loss			
No-invasion revenue from sales	7,005,000,000	(51,402,955)	6,953,597,045
Actual revenue from sales	(3,450,000,000)		(3,450,000,000)
Sub-total	3,555,000,000	(51,402,955)	3,503,597,045
Refined oil products sales loss			
No-invasion revenue from sales:			
Refined in Kuwait	14,131,874,331		14,131,874,331
Refined outside Kuwait	267,125,669	(267,125,669)	0
Actual revenue from sales:			
Refined in Kuwait	(2,499,000,000)		(2,499,000,000)
Refined outside Kuwait	0		0
Sub-total	11,900,000,000	(267,125,669)	11,632,874,331
Total	15,455,000,000	(318,528,624)	15,136,471,376

(ii) Processed gas products sales loss

Table 9. Claimed lost revenue from sales of processed gas products

Claim element	Claim amount (US$)
Processed gas products sales loss:	
No-invasion revenue from sale of processed gas products	1,216,000,000
Actual revenue from sale of processed gas products	(356,000,000)
Total of processed gas sales loss claim	860,000,000

224. As discussed in paras. 107 and 131, supra, KPC produces associated gas products from its crude oil production. KPC estimates the volume of processed gas products that could have been produced and sold from crude oil based on KPC's budget for the year ended June 1994. According to the KPC accountants' report, the KPC budget is based on historical records of gas production. The 1994 budget is used because it is based on a crude oil production rate of approximately 1.5 million bpd, the base amount used to calculate KPC's total lost production. KPC adjusts the gas production figures in the claim using a constant gas to oil ratio based on the 1994 budget, to estimate the volumes of propane and butane that it could have produced and sold if the invasion had not occurred. The KPC accountants' report sets out the production figures for propane and butane extracted from the 1994 budget.

225. However, KPC's sole purchaser of lean gas is the Kuwaiti Ministry of Electricity and Water ("MEW"). Therefore, KPC uses the level of deliveries of lean gas to MEW in the year ended 30 June 1990 to project a no-invasion volume of lean gas that would have been sold. Because MEW is the sole purchaser of KPC's lean gas, the Panel finds that KPC has historically produced more lean gas than it could sell.

226. Based on the evidence, the Panel finds that the ratios and volumes used by KPC to ascertain the volumes of processed gas products produced from crude oil do not overstate the lost sales revenues.

227. KPC claims that it would have earned US$ 1,216 million in no-invasion revenue from the sales of propane, butane, and lean gas from 2 August 1990 through July 1993. The loss period for processed gas products is longer than the loss period for crude oil because the processing of associated natural gas was not restored until April 1993 (propane), June 1993 (lean gas), and July 1993 (butane).

228. The Panel finds that the loss period used by KPC to estimate its lost processed gas product sales revenue does not overstate the length of time

during which KPC could not earn processed gas product sales revenue at pre-invasion levels.

229. As discussed at para. 109, supra, KPC employs three categories of prices to estimate the lost propane and butane revenues. In the case of losses occurring during the price increase period, KPC employs no-invasion prices adjusted for relevant price differentials. In the case of losses occurring after the price increase period, KPC employs actual market prices adjusted for relevant price differentials when no actual sales data were available. Losses occurring during periods when KPC was able to sell processed gas products were valued at actual sales prices. With respect to lean gas, KPC employs two categories of prices. When there were no actual sales data available, KPC employs the prices at which it sold lean gas during the six months ended 30 June 1990; these prices are equal to the prices of lean gas it achieved when sales resumed after the end of Iraq's occupation of Kuwait.

230. The Panel has already found, at para. 190, supra, that KPC's no-invasion and actual market prices for propane and butane are not overstated. In addition, the Panel finds that the actual sales prices employed correspond to the prices at which KPC made relevant actual sales. With respect to lean gas, the Panel also finds that the prices used by KPC reflect the actual sales prices it achieved when the sales of lean gas resumed.

231. KPC calculates the above price differentials based on its actual sales of processed gas products during the six months ended 30 June 1990. From a review of KPC's sales contracts, the Panel finds that the price differentials employed by KPC do not lead to an overstatement of KPC's lost sales revenue.

232. KPC deducts US$ 356 million in processed gas product revenue that it claims it earned from 2 August 1990 through July 1993. Based on KPC's gas production reports, which contained sales data, the Panel has verified that the deduction accurately reflects the actual revenue earned by KPC on the sales of processed gas products during this period.

233. In addition, the Panel makes a deduction of US$ 2,146,888 to account for the reduced volume of gas, discussed at paras. 197-198, supra. This deduction is calculated by applying the verified processed gas products prices to the volume of gas that would have been extracted from the 4 million barrels of crude oil.

234. The Panel recommends compensation in the amount of US$ 857,853,112 for lost sales revenues on processed gas products.

Table 10. Panel's findings on lost revenue from sales of processed gas products

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Processed gas products sales loss:			
No-invasion revenue from sale of processed gas products	1,216,000,000	(2,146,888)	1,213,853,112
Actual revenue from sale of processed gas products	(356,000,000)		(356,000,000)
Total	860,000,000	(2,146,888)	857,853,112

(iii) Refining margin loss

Table 11. Claimed refining margin loss

Claim element	Claim amount (US$)
Refining margin loss:	
No-invasion revenue from refining margin	2,523,000,000
Actual revenue from refining margin	(1,491,000,000)
Total loss from refining margin	1,032,000,000

235. In addition to the sales of crude oil and refined oil products lost during the period from 2 August 1990 through 30 November 1992, KPC claims that if it had been able to refine crude oil at pre-invasion levels, it would thereafter have earned US$ 2,523 million in additional refining margins on its production of crude oil from 1 December 1992 through 30 June 1994.

236. The Panel finds that the loss period used by KPC to estimate its lost refining margin does not overstate the length of time during which KPC could not earn refining margin at pre-invasion levels.

237. To estimate the refining margin loss, KPC employs three categories of prices. KPC employs actual market prices adjusted for relevant price differentials to value losses occurring during periods with respect to which no actual sales data are available. In the case of losses occurring during periods when KPC was able to sell refined oil products, the refined product margin was calculated using actual sales prices. In estimating the refining margin losses occurring in 1994, KPC employs projected market prices adjusted for relevant price differentials.

238. The Panel has already found, at para. 193, supra, that KPC's actual market prices are not overstated. In addition, the Panel finds that the projected market prices do not overstate the prices at which KPC sold refined oil products in 1994 and that the actual sales prices used correspond to the prices at which KPC sold refined oil products during the relevant period.

239. KPC calculates the above price differentials based on its actual sales of refined oil products during the six months ended 30 June 1990 and its actual sales during the six months ended 31 December 1993. From a review of KPC's sales contracts, the Panel finds that the price differentials employed by KPC do not lead to an overstatement of KPC's lost sales revenue.

240. KPC calculates the actual refining margin it earned from 1 December 1992 through 31 December 1993 based on its actual sales data and accounting records. KPC estimates the refining margins that it would have earned from 1 January through 30 June 1994 as it did not have available actual data for this period. To do this, KPC applies a linear increase to the volume of crude oil refined from the level in December 1993 to its pre-invasion level on 30 June 1994 and uses the adjusted prices described above. KPC deducts actual and projected revenue of US$ 1,491 million in refining margin that it claims it earned from 1 December 1992 through 31 December 1993 and that it projects it would have earned from 1 January 1994 through 30 June 1994.

241. Based on KPC's accounts and their underlying documents, the Panel has verified that the above deduction accurately reflects the actual revenue earned by KPC on the sales of refined oil products during this period.

242. Accordingly, the Panel recommends compensation of US$ 1,032 million for KPC's refining margin loss.

Table 12. Panel's findings on refining margin loss

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Refining margin loss:			
No-invasion revenue from refining margin	2,523,000,000		2,523,000,000
Actual revenue from refining margin	(1,491,000,000)		(1,491,000,000)
Total loss from refining margin	1,032,000,000		1,032,000,000

(b) Cost savings

Table 13. KPC's estimate of cost savings

Claim element	Claim amount (US$)
Cost saving deductions:	
Cost of sales	98,000,000
Production costs	235,000,000
Processing fees	2,022,000,000
General, marketing and administrative costs	19,000,000
Total cost saving deductions:	2,374,000,000

(i) Cost of sales

243. In the claim, KPC alleges that its cost of sales consists of the cost of oil purchased from Kuwait, the processing fees paid to overseas refineries, the cost of oil and gas purchased from third parties, and the freight and insurance costs. KPC deducts US$ 98 million for costs savings on processing fees paid to overseas refineries from its claim.

244. KPC makes no deduction for the cost of oil purchased from Kuwait. Because the PSL claim is presented on behalf of both KPC and Kuwait, the Panel finds that KPC was correct to treat the cost of oil purchased from Kuwait as an internal transfer price and, thus, to make no deduction from the claim. The Panel is aware, however, that Kuwait and its Ministry of Oil might have realised cost savings as a result of the invasion and occupation and that some of these cost savings might relate to the Kuwait government's involvement in oil production and marketing. The Panel notes that there is a Panel of Commissioners assigned to review the claims submitted by Kuwait and its ministries (the "F3 Panel").[16] The E1 Panel has been assured that, in processing these claims, the F3 Panel will consider the cost savings, if any, that might have been realised by Kuwait and its ministries as a result of the invasion and occupation, including any that relate to oil production and marketing. Thus, the Panel will not address in the present report the issue of whether Kuwait and its Ministry of Oil realised any cost savings that relate to its oil production and marketing activities.

245. KPC states that it saved processing fees of US$ 98 million because it did not send any crude oil to be refined overseas. As discussed in paras. 204-205, supra, the Panel has found that KPC did not prove that it would have sent any oil to be refined overseas and, therefore, has disallowed that portion of the claim for lost sales revenues on refined oil products.

as noted in para. 222, supra. Consequently, the Panel also reverses the US$ 98 million deduction.

246. KPC states that it does not deduct cost savings relating to oil and gas purchased from third parties because this claim concerns only the volumes of crude oil and gas that could have been produced in Kuwait by KPC. The Panel finds that this approach is reasonable. Therefore, the Panel finds that there should be no cost saving deductions related to oil and gas purchase from third parties.

247. KPC states that, although it could not export crude oil, refined oil products and processed gas products during the occupation of Kuwait, it enjoyed no savings in freight and insurance costs. Based on a review of KPC's accounts and its underlying records, the Panel is satisfied that the claim is based on prices that already exclude freight and insurance costs. Therefore, the Panel finds that no further deduction for freight and insurance cost savings must be made.

248. Accordingly, the Panel finds that no deduction for costs savings should be made for KPC's costs of sales.

(ii) Production costs

249. KPC states that it enjoyed savings on KOC's production costs of US$ 235 million and deducts this amount from its claim.

250. Included in the calculation of this figure are certain adjustments to take into account actual costs, depreciation, car leasing costs and inflation.

251. The Panel agrees with this approach and, based on a review of KOC's and KPC's accounts and underlying records, finds that KPC's calculations of its production cost savings are reasonable. Therefore, the Panel finds that the amount of US$ 235 million should be deducted from the claim.

(iii) Processing fees

252. KPC states that it made savings on KNPC's processing fees of US$ 2,022 million and deducts this amount from its claim. As discussed in para. 137, supra, the KNPC processing fees are calculated based on KNPC's claim documents and the KNPC report.

253. The Panel's expert consultants reviewed the KNPC report and found that the figures were extracted and calculated accurately from the supporting documents. Accordingly, the Panel finds that the estimated cost savings of processing oil in the KNPC refineries appear reasonable. As

KNPC's claim has not been verified and is the subject of a claim that will be considered by this Panel later, the Panel finds that any adjustment which arises from the KNPC claim verification that affects KPC's claim will be made in KNPC's claim.

254. The Panel therefore finds that the amount of US$ 2,022 million should be deducted from the claim.

(iv) General, marketing, and administrative costs

255. KPC states that it made savings on general, marketing and administrative costs of US$ 19 million and deducts this amount from its claim.

256. The Panel and its expert consultants reviewed KPC's accounts and underlying records, and conclude that KPC's calculations and adjustments are reasonable.

257. The Panel finds, therefore, that the amount of US$ 19 million should be deducted from the claim.

(v) Panel's findings on cost savings

258. Based on the foregoing findings, the Panel finds that KPC has appropriately calculated and deducted the cost savings that it realised as a result of Iraq's invasion and occupation of Kuwait. Further, based on a review of the evidence, the Panel finds that KPC has not made any other cost savings that should be deducted from its claim.

259. As discussed in para. 124, supra, KPC makes no deduction for the value of the crude oil and gas not produced because all the lost volume claimed was destroyed. The Panel finds that this approach is correct, because the total volume of oil destroyed is higher than the lost volume of 835 million barrels. The Panel's findings on the verification of the volume of oil destroyed as a result of Iraq's invasion and occupation of Kuwait can be found at para. 376, infra.

Table 14. Panel's findings on cost savings

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Cost saving deductions:			
Cost of sales	98,000,000	(98,000,000)	0
Production costs	235,000,000		235,000,000
Processing fees	2,022,000,000		2,022,000,000
General, marketing and administrative costs	19,000,000		19,000,000
Total cost saving deductions:	2,374,000,000	(98,000,000)	2,276,000,000

6. Conclusion and recommendation

260. The recommendation of the Panel is summarised as follows:

Table 15. Production and sales loss claim: recommended compensation

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Lost revenues			
Crude and refined oil products sales loss	15,455,000,000	(318,528,624)	15,136,471,376
Processed gas products sales loss	860,000,000	(2,146,888)	857,853,112
Refining margin loss	1,032,000,000		1,032,000,000
Sub-total revenue loss	17,347,000,000	(320,675,512)	17,026,324,488
Cost savings			
Cost of sales	(98,000,000)	98,000,000	0
Production costs	(235,000,000)		(235,000,000)
Processing fees	(2,022,000,000)		(2,022,000,000)
General, marketing and administrative costs	(19,000,000)		(19,000,000)
Sub-total cost savings	(2,374,000,000)	98,000,000	(2,276,000,000)
Total	14,973,000,000	(222,675,512)	14,750,324,488

C. The fluid loss claim

1. Facts and contentions

(a) Summary of claim and claimant's methodology

261. KPC alleges that, prior to the liberation of Kuwait, Iraqi forces deliberately sabotaged KPC's oil wells and oil producing facilities, thereby burning and destroying crude oil and oil products and releasing crude oil onto the surface and into the waters offshore Kuwait.

262. In the fluid loss claim, KPC has attempted to quantify the total losses of hydrocarbon fluids (crude oil and associated natural gas) from Kuwait's reservoirs that occurred as a result of this damage. KPC claims that scientific evidence demonstrates that Kuwait lost approximately 1,255.50 million barrels of reservoir fluids to fires and spills as a result of Iraq's actions. KPC seeks compensation in the amount of US$ 6,640,516,049 for the value of these lost hydrocarbon fluids.

263. KPC asserts that 839 million barrels of the total asserted fluid loss of 1,255.50 million barrels have been accounted for in the PSL, leaving 417 million barrels for which it has previously made no claim.

264. KPC maintains that it is improper to ignore this additional fluid loss if it could have been produced and sold during the claim period. KPC asserts that even though in the PSL claim it assumed production of 1.5 million bpd, it had the capacity to produce and process approximately 2.1 million bpd.

265. KPC argues that it should be permitted to recover the value of the fluids that it could have theoretically produced during this period, regardless of whether they would have exceeded the PSL production levels.

266. KPC claims that it would have produced and sold the 417 million barrels of production only as crude oil and associated natural gas, primarily because it estimates that the markets for refined oil products would have been satisfied by the volumes included in the PSL. KPC specifies that it would have processed and sold the lost associated natural gas as propane, butane, and lean gas.

267. Again, KPC's methodology is relatively straightforward. KPC values the crude oil and processed gas products using the same crude oil and gas prices, including the actual sales prices and adjusted no-invasion and actual market prices that it used in the PSL claim. KPC then subtracts from this figure the revenue it received from the sales of recovered crude - i.e., crude oil that was lying on the surface and which was sold and pumped offshore to tankers shortly after the liberation of Kuwait.

268. KPC's fluid loss claim is summarised as follows:

Table 16. KPC's fluid loss claim

Loss element	Claim amount (US$)
Crude Oil	6,282,323,692
Gas	
Propane	155,072,991
Butane	130,603,413
Lean gas	158,460,157
Total value of lost reservoir fluids	6,726,460,253
Proceeds from sales of recovered crude	(85,944,204)
Total	6,640,516,049

269. The various components of the FL claim - volume of lost reservoir fluids, valuation of the lost fluids, and cost savings - are discussed in the following sections.

(b) Volume of lost reservoir fluids

270. KPC alleges that it suffered losses of hydrocarbon fluids from Kuwait's oil wells as a direct result of Iraq's detonation of the wells in February 1991.

271. Because the explosions destroyed the metering equipment on the wells, KPC was required to estimate the volume of fluids lost from the reservoirs. To do this, KPC and its consultants employ a technique known as "reservoir simulation", which uses known data regarding the reservoir to prepare a mathematical model of the reservoir. KPC asserts that simulation permits prediction of the total producible fluids in the reservoir and can be used to predict the effects of certain activities, such as drilling additional wells in a reservoir.

272. Following the liberation of Kuwait, KPC engaged five different firms of petroleum engineers to prepare reservoir simulations of the reservoirs in the fields allegedly damaged by the Iraqi actions. As described more fully at paras. 332-346, infra, these reservoir simulations are mathematical models of the reservoirs. Once created, a simulation model is operated in a predictive mode, with the results compared against production data. Discrepancies result in adjustments to the reservoir properties input into the simulation model until the model closely matches actual production. This is called "history matching." Once an acceptable history match is achieved, KPC alleges that a simulation model is capable of predicting potential production from a reservoir, including production under blow-out conditions.

273. According to KPC, the calculations described above resulted in a total estimated fluid loss of 1,255.50 million barrels. A more detailed analysis of KPC's methods and execution of these methods appears in section 5(a), *infra*.

274. The period of fluid loss is stated as being the time until the fires were extinguished and the last wells were brought under control, which KPC asserts occurred in November 1991. The period over which KPC has valued the claim, however, is 2 August 1990 to 30 June 1993. The reasons for its decision to do so are described at paras. 280-281, *infra*.

(c) Valuation of lost reservoir fluids

275. As noted, KPC states that 839 million barrels of crude oil are accounted for in the PSL. Specifically, KPC acknowledges that because no deduction was taken from the PSL claim for the value of the crude not produced, KPC cannot also claim compensation for the loss of this crude.

276. Thus, in valuing the FL claim, KPC limits its claim to 417 million barrels (the "claimed FL volume"), which is the 1,255.50 million barrels it claims were lost due to the blow-outs, less the 839 million barrels accounted for in the PSL.

277. In the PSL claim, KPC seeks compensation for the production loss volume of 839 million barrels - i.e., the additional volume of crude oil that it would have produced had Iraq's invasion and occupation of Kuwait not occurred. The PSL claim calculation is based on the assumption that KPC would have produced at or near its OPEC quota of 1.5 million bpd.

278. In the FL claim, KPC asserts that at 2 August 1990, it had the capacity to produce 2.1 million bpd. Thus, KPC argues that its capacity during the PSL claim loss period (2 August 1990 through 30 November 1992) was 2.1 million bpd multiplied by 852 days, or 1,789.2 million barrels.

279. Based on this capacity, KPC states that it could have produced and sold the entire volume of crude oil lost in the blow-outs during the PSL crude oil loss period (2 August 1990 through 30 November 1992) while producing at a rate of "just under 2 million bpd."

280. However, KPC points out that, due to the damage inflicted to KOC's production facilities, it was not able to achieve a daily production level in excess of 1.9 million bpd until July 1993. For this reason, it states, it has valued the fluid loss volume over the period that began on 2 August 1990 and ended on 30 June 1993. It did so by dividing the fluid loss volume by the number of months in the loss period and multiplying each resulting monthly volume by the average no-invasion, actual market or

actual sales price, adjusted for the relevant price differential, that prevailed during the relevant month.

281. In the FL claim, KPC assumes that the volumes of refined oil products accounted for in the PSL claim would have satisfied the markets for its higher-priced refined oil products. Thus, it values all production in excess of Kuwait's quota of 1.5 million bpd as crude oil and as the processed gas products that could have been extracted from that crude oil. KPC further assumes that the claimed FL volume would have been marketed in volumes over and above the volumes in the PSL claim from August 1990 to the end of June 1993.

282. As in the PSL claim, KPC claims that Iraq's invasion and occupation of Kuwait caused the market prices of crude oil and gas to increase significantly from their pre-invasion levels. As a result, abnormally high oil prices prevailed during part of the claimed loss period.

283. Because the price increases would not have occurred if Iraq had not invaded Kuwait, KPC states that use of the higher actual market prices to value the fluid loss volume would result in an overstatement of its loss. Therefore, as it did in the PSL claim, where necessary it employs adjusted no-invasion prices to value the crude oil and processed gas products that it claims it would have been able to produce during the price increase period.

(d) Adjustments to claim amount

284. KPC states that, although the PSL volume claim is distinct from the volume at issue in the FL claim, the two claims are closely linked. KPC asserts that the value of the FL claim relates closely to the revenues that would have been earned from ordinary production and marketing of these fluids.

285. Based on this assertion, KPC states that the same cost and price data can be used to value both the PSL and FL claims. However, KPC makes no deduction for saved costs that would have been incurred in the production of the fluid loss volume. KPC asserts that all costs of production are accounted for in the PSL, including the costs that would have been incurred in respect of the fluid loss volume had it been produced at the same time as the production loss volume.

286. In this claim, KPC employs the same crude oil and processed gas prices and price differentials that are used in the PSL claim. See paras. 109 and 119, supra.

287. KPC also makes adjustments for the revenues it received from sales of crude recovered from the land surface as part of Kuwait's oil recovery

programme. To account for these, KPC deducts US$ 85,944,203.54 from its lost revenues.

2. Evidence presented in support of the claim

288. KPC submitted with the FL claim much of the same evidence that was submitted with the PSL claim, including all of the documents listed in para. 139, supra. In addition, KPC submitted various materials related to the WBC claim, copies of most of the other Kuwait Oil Sector claims, and an extensive compendium of legal materials intended to support the claim's legal arguments.

289. As with the PSL claim, KPC's submission contains almost no underlying engineering, financial or accounting evidence that relates directly to the fluid loss measurements or pricing. Again, KPC states that the documents submitted with the claim are "by no means" all of the supporting evidence. Moreover, none of the reservoir simulation studies are included, on the grounds that:

> "The Consultants' Reports contain sensitive and strategic information about Kuwait's oilfields. Due to their confidential nature, copies are not being made available with this statement of claim. Until such time as this [claim] is referred to a Panel of Commissioners, the Consultants' Reports will be retained by the Claimant, but will be made available on a strictly confidential basis to Commissioners at the relevant time."

290. As discussed in para. 141, supra, the Panel required an extensive production of evidence from the claimant, including all of the material identified above. Either the claimant has identified and produced evidence that fully supports the element, or the Panel has disallowed the element in whole or in part.

3. Iraq's responses

291. Iraq assisted the Panel by filing a detailed response to the FL claim. This response evidences significant work by Iraq in all areas of the claim - accounting, engineering and economics - and was valuable to the Panel in evaluating this claim. Iraq's responses can be grouped into four categories, as discussed in the following paragraphs.

292. First, a few of Iraq's written submissions, and all of its oral proceeding presentation, concerned such matters as the Commission's authority to process claims and award compensation and propriety of the Rules and the Commission's procedures. The Panel finds that the majority of these matters are properly addressed to either the Governing Council or the Security Council, and not to a Panel of Commissioners. The remaining

procedural objections raised by Iraq have been adequately addressed in the Panel's previous reports.

293. Second, Iraq raises certain substantive objections to the claim. Iraq argues that the revenue losses caused by the invasion and occupation are indirect and not compensable. In particular, Iraq maintains that Kuwait was negligent in its management of repairs, thus prolonging unnecessarily the loss periods in the claim, and that it stalled the fire control efforts. The Panel previously rejected these objections in the WBC and second instalment reports. See E1 Second Instalment Report, paras. 145-146.

294. Third, Iraq challenges the quality of the evidence presented by KPC in support of the reservoir simulations employed in KPC's claim. Iraq urges the Panel to request underlying financial and accounting records or other evidence, and to require verification of reports prepared for the claimant by its consultants. The Panel found that Iraq's concerns are legitimate and, as described above, has required the claimant to undertake a significant further production of supporting evidence.

295. Fourth, Iraq raises certain objections that are particular to the FL claim.

(a) Iraq's primary challenge is to the use of reservoir simulation, as employed by Kuwait, to measure the fluid loss volume. Iraq raises a number of technical questions regarding the appropriateness of using reservoir simulation to measure flow through the wells over a relatively short period of time. Iraq suggests that alternative methods would better account for the physical constraints on flow imposed by the wells.

(b) Iraq argues that any fluid loss should not be valued as current production, as KPC requests. Iraq maintains that the economic effect of any fluid loss will not be felt until the time when Kuwait's ability to produce crude oil begins to be adversely affected by the fluid loss. Because this event will not occur until the far future, Iraq suggests that any fluid loss volume should be priced as a loss of reserves.

(c) Iraq maintains that, in any event, the non-invasion prices used by KPC to value the claims are too high, because Kuwait's return to the market would have depressed prices.

(d) Iraq also challenges KPC's assertion that Kuwait would have sold the fluid loss volume during the loss period in addition to the production loss volume, as doing so would have depressed prices. Moreover, Iraq contends that KPC could not have sold the fluid loss volume both for logistical and political reasons.

296. Iraq's various contentions will be considered below together with the Panel's verification and analysis of the claim.

4. Legal analysis

(a) Compensability

297. KPC argues that the losses described in the FL claim result from "the dispersal of oil and gas from Kuwait's oil reservoirs during the period of uncontrolled flow resulting from the detonation of well-heads by Iraqi forces in Feburary 1991, until brought progressively under control by November 1991."

298. KPC maintains that these lost reservoir fluids are direct losses - and thus compensable - pursuant to Governing Council decision 7, paragraph 21, which states that compensable losses include losses resulting from:

> (i) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; ... [and]
>
> (ii) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion and occupation.

299. The Panel finds that KPC has correctly stated the relevant rules regarding compensability of the business losses claimed in the FL claim.[illegible]

300. Applying these rules, the Panel has previously found that the damage to Kuwait's oilfields and related facilities, and the well blow-outs caused thereby, were the direct result of Iraq's invasion and occupation of Kuwait. See WBC Report, paras. 86-87. Because the losses alleged in the FL claim are the product of the well blow-outs, they are, to the extent proved by evidence, compensable under Security Council resolution 687 and Governing Council decision 7.

(b) Evidence

301. KPC submits in support of the FL claim a number of reports prepared by several petroleum engineering consultants. One of the stated purposes of these reports is to measure the amount of reservoir fluids lost to the well blow-outs. As previously described, the petroleum engineering consultants employ an estimation technique referred to as "reservoir simulation" to estimate the amount of reservoir fluids expelled from each of the affected reservoirs during the well blow-outs.

302. KPC contends that "[b]ecause destruction of the gauges at the well-heads meant actual and contemporaneous figures are not available, measurement of the fluids lost has had to be undertaken by simulating each reservoir according to its known condition immediately prior to the Iraqi invasion on 2 August 1990, and calculating the consequences of blowing up the well-heads."

303. During these proceedings, KPC has argued that, in the absence of actual measurements, the most reliable method of measuring the lost reservoir fluids is reservoir simulation.

304. KPC relies on these simulations to estimate the total quantity of reservoir fluids lost to the well blow-outs. Iraq has challenged the use of simulations, asserting that the simulations have been improperly performed or have overstated the loss. The Panel views this challenge not as an objection to the use of simulations, but rather to the execution of the simulations. That challenge is addressed hereafter in the section on the verification of KPC's claim.

305. The standard of evidence is set forth at paras. 156-159, supra. As discussed, the Panel may consider any evidence "appropriate ... to demonstrate the circumstances and amount of the claimed loss". As described more fully hereafter, the Panel finds that, in the absence of actual measurements of reservoir fluid flow, estimates of reservoir fluid loss produced through reservoir simulation may be used as evidence of fluid loss, to the extent that such simulations are produced using generally accepted scientific methods and correct data.

306. KPC also relies on the reports from its accountants and projections of oil prices prepared by its price consultants that were presented with its PSL claim. For the reasons discussed at paras. 158-159, supra, the Panel finds that it is appropriate to use these reports in the FL claim.

(c) Principle of compensation

307. KPC argues that, under international law, the guiding principle of compensation is as stated in the Chorzow Factory case, that the "reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[illegible]

308. KPC asserts that the proper standard of compensation for the losses of reservoir fluids is to treat the fluids lost as losses of tangible assets. KPC contends that, under the principle stated above, such losses should be valued "at the cost of replacing that asset as at the date of its loss."

309. KPC maintains that if it had the capacity to produce and market those lost fluids, then the lost fluids should be valued at their "net market value."

310. Thus, KPC asserts that any FL volume should be valued as if it had been produced and sold during the claimed loss period, provided that the total PSL and FL volumes are less than KPC's capacity during that period. KPC acknowledges, however, that its ability to sell certain refined oil products would have been fully utilized by the PSL volume. Therefore, KPC proposes to value the FL volume solely as crude oil and certain processed gas products.

311. Iraq argues that, at most, any lost reservoir fluids should be treated as a loss of reserves and priced accordingly. Although it does not state an estimated loss figure calculated using this method, Iraq contends that the loss would be much less than the amount claimed by KPC.

312. Iraq argues that the problem with KPC's approach is that, due to the enormous size of Kuwait's reservoirs, the effects of the fluid loss would not begin to be felt by Kuwait until many decades in the future, when production from Kuwait's reservoirs would begin to decline sooner than they would have otherwise done. The present value of such loss would be much smaller than the loss claimed by KPC.

313. KPC recognizes this problem, but states that under international law, and because of the intentional nature of Iraq's wrongful conduct, full compensation requires "full value" for the asset taken (or, in this case, destroyed) as at "the date of loss." This does not, of course, fully address the problem, as the value of a number of barrels of crude oil in the ground at the time of the blow-out would very significantly based on when that oil was to be produced.

314. The Panel finds that KPC has correctly stated the basic principle governing compensation - that the remedy should attempt to re-establish the situation that would, in all probability, have existed if the act causing the loss had not been committed. However, because the Panel finds that the proven FL volume is so small that it would, in all probability, have been produced during the same period as the PSL volume, the Panel does not need to address KPC's contention that volumes which would not have been produced should nonetheless still be valued at "net market value" at the date of loss or Iraq's assertion that any such loss should be valued as a loss of reserves.

315. The Panel finds that the appropriate method of valuing the proven FL volume is to value it as if it had been produced and sold during the period between 2 August 1990 and the date on which Kuwait resumed production of

crude oil at pre-invasion levels. This finding is discussed more fully at paras. 380-393, infra.

5. Factual analysis

(a) Volume of fluid loss

(i) Summary of volumes claimed

316. As described above, KPC's claim is based on an asserted loss of 1,255.50 million barrels of crude oil. This loss of oil is an aggregate of the amounts estimated by five reservoir engineering firms, under contract with KPC, from the United States, Canada, the United Kingdom and France. Each consulting firm assessed separate areas affected by well blow-outs. Although each consulting firm had its own approach to the technical issues, they all based their conclusions on comparable reservoir simulation techniques.

317. The loss of crude oil asserted by KPC, by area, is summarised as follows:

Table 17. Summary of the loss of crude oil asserted by KPC, by area

Field	Consultant	Claimed blow-out volumes (crude oil) (MMbbl)
Greater Burgan	1	940.50
	2	10.01
Main Burgan	3	13.97
Raudhatain	1	26.28
	4	128.86
Sabiriyah	4	65.02
Minagish	2	49.34
Umm Gudair	5	18.85
	2	2.67
Total		1,255.50

NB - some areas contained multiple reservoirs, which were studied by separate consultants, and some consultants studied more than one reservoir.

318. The four largest studies comprise approximately 94 per cent, and the Greater Burgan losses studied by KPC's Consultant 1 comprise approximately 75 per cent, of the claimed loss of crude oil. These facts were the basis of the development of the Panel's technical verification programme, which subjected those four studies to detailed scrutiny.

(ii) Panel's approach to verification

319. In order to assess and verify the engineering techniques employed by KPC and its consultants, the Panel engaged its own expert petroleum engineering consultants with reservoir simulation experience.

320. With the assistance of its petroleum engineering consultants, the Panel developed a comprehensive technical verification programme first to assess the method employed by KPC and its consultants, and then to verify that the method was employed by KPC and its consultants in an acceptable way.

321. The Panel's technical verification programme began with a detailed review of the reports prepared by the five consulting firms retained by KPC. In each case, the consulting firms prepared a summary volume outlining their methodology, and numerous supplementary volumes were prepared detailing the geology and fluid characteristics of the various reservoirs, and the results of the reservoir simulation process.

322. A number of questions arose from the review of the reports prepared by KPC's reservoir engineering consultants. Accordingly, the Panel directed the secretariat and the Panel's petroleum engineering consultants to undertake a comprehensive programme of witness interviews and document inspection. Interviews were conducted with four of the five engineering firms retained by KPC, at which the relevant files were inspected. This programme of interviews and inspections permitted the Panel's petroleum engineering consultants to assess the technical detail underlying the work of KPC's consultants and to examine the relationship between KPC and its consultants.

323. The Panel then instructed its petroleum engineering consultants and the secretariat to undertake a technical inspection of relevant KOC and KPC documents in Kuwait. The objective of this inspection, which was conducted over a two-week period in KOC's document archive in Kuwait, was to examine the work of KPC's reservoir simulation consultants in the context of the engineering work conducted in the past on the relevant reservoirs. In addition, raw historical pressure and production data were obtained in order to permit the Panel's consultants to conduct an independent assessment as a check on the work performed by KPC's consultants.

324. In the course of its review of this claim, the Panel became concerned about the impact of three factors that might have resulted in an overstatement of the volume of oil lost during the well blow-outs. First, the Panel directed that further inquiries be made into the condition of the well-heads on the affected wells. Specifically, the Panel was concerned that a number of well-heads appeared to have been damaged but not destroyed

by explosions at the well-head, and this raised the possibility of constrictions at the well-head which might have reduced the potential flow of oil.

325. Second, the Panel directed further inquiries into the possibility that an unusual amount of water might have been produced, along with hydrocarbons, from the aquifer underlying the reservoirs. This might have occurred as a result of a coning effect during the blow-outs, and might also have resulted in an overstatement of blow-out volumes.

326. Third, the Panel learned that a number of wells experienced a large accumulation of burned oil residue (termed "coke" by KPC) around the well-heads during the blow-out period. The Panel directed further inquiries into the possibility that these accumulations of coke may have had the effect over time of reducing the flow of oil from damaged wells.

327. The Panel also directed its petroleum engineering consultants to devise sensitivity analyses to test the reservoir simulation model developed by the KPC consultant firm responsible for estimating the loss of oil from the Greater Burgan reservoir. These sensitivity analyses were designed to test the impact of changes in certain variable inputs to the reservoir simulation model. At the Panel's request, KPC instructed its responsible consultant firm to run the sensitivity analyses requested by the Panel's petroleum engineering consultants on their computer model, and to report on the results to the Panel.

328. The Panel further instructed its petroleum engineering consultants to perform their own independent analysis of the loss of oil as a result of the well blow-outs, as a means of checking the work undertaken by KPC and its consultants. As the development of independent reservoir simulation models for each of the affected reservoirs was not practical or cost effective, the Panel directed its petroleum engineers to conduct a well-by-well analysis. This approach to the problem, known as a "nodal" or "analytical" study, focussed on the productive potential of the most prolific wells in the largest reservoirs, taking into account external factors such as well-head damage or constriction, water production and reservoir decline rates. A more comprehensive description of this nodal analysis is found below.

329. In conjunction with the sensitivity studies and the nodal analysis work undertaken by the Panel's petroleum engineering consultants, and in order to study the well-head constriction, water coning and coke accumulation issues, the Panel directed a further round of technical inspections and witness interviews. Interviews were conducted with two of the major fire-fighting firms responsible for controlling large numbers of wells. These interviews focused on the condition of the well-heads and the

accumulation of coke. In addition, the secretariat and the Panel's petroleum engineers met again for a working session with the KPC reservoir simulation consultant responsible for the study conducted on the largest single reservoir. This working session was dedicated to the completion of the sensitivity studies described above.

330. In addition, the Panel learned during the course of its verification programme that a major oil company was retained by KOC, after this claim was filed, to adapt the reservoir simulation model developed by KPC's consultant for the Greater Burgan reservoir to its own software programme. This was done to permit an assessment of various options for future production. Further, the same major oil company then developed an entirely new reservoir simulation model for the same reservoir. The Panel directed that these models be investigated to determine if they might provide further information on the oil lost during the well blow-outs from the Greater Burgan, and several witness interviews were accordingly undertaken for that purpose.

331. In the implementation of its technical verification programme, the Panel has been mindful of Iraq's challenges to the use of reservoir simulation to measure the loss of fluids in uncontrolled circumstances over a short period of time. The Panel is satisfied that the preparatory work and the reservoir simulation models prepared by KPC's consultants, and the Panel's own technical verification programme as described above, together constitute the most exhaustive and detailed approach to reservoir studies available to the petroleum industry.

(iii) Reservoir simulation

332. As noted earlier, reservoir simulation is a mathematical modelling technique designed to simulate the reservoir under study, and which can be used to predict reservoir behaviour. One of KPC's consultants described reservoir simulation as follows:

> "Simulation of oil reservoir performance in this application refers to the construction and operation of a numerical model whose behaviour assumes the appearance of actual reservoir behaviour. In this case the model is simply a set of equations, which subject to certain assumptions, describes the physical processes active in the reservoir. While the model obviously lacks the reality of the reservoir, the behaviour of a calibrated model will approximate that of the reservoir."

333. The development of a reservoir simulation model relies on all of the data that are known about a reservoir, such as the reservoir structure as mapped by seismic data and subsurface information derived from well logs

and taking into account known oil/water contact points, and the thickness of the oil bearing rock. Other inputs into the model include petro physical data derived from core samples and well logs (such as the permeability and porosity of the rock and water saturation levels), fluid properties and well configurations. Production history is another known quantity that is input into the model.

334. Reservoir simulation models are constructed on the basis of grid blocks, which are three-dimensional spaces governed by equations describing the rock and fluid characteristics for the portion of the reservoir they represent. The model extrapolates the grid blocks from known data points. A reservoir simulation model may contain tens of thousands of grid blocks or more, each describing a unique portion of the reservoir. The grid blocks typically vary in size, with the blocks describing the edges of the reservoir typically being much larger than those blocks describing the centre of the reservoir.

335. Reservoir simulation models take into account the location of all wells that are or have been active in a reservoir. Some wells (particularly in Kuwait) have dual completions, meaning that the well casing is perforated in two oil producing zones permitting the well to produce oil from both zones. Typically, the well will produce from one zone inside a production "string" or tube inside the casing, and from the other zone oil will be produced in the area between the production string and the casing (known as the "annulus"). A "packer" or divider will be placed in the annulus between the producing zones to prevent the sub-surface mingling of oil from separate zones.

336. The models take into account the fact that wells are drilled, may produce for a time, and then may be shut-in or abandoned. Shut-in wells may be brought back on line, or they may be reworked to produce oil from higher zones. All of this information, which is essentially the entire production history of the subject reservoir, is programmed into the model by time-step.

337. Once the basic reservoir simulation model is constructed, the model simulates the production of oil over the productive history of the reservoir. The simulation typically starts with a model of the reservoir prior to any production of oil. A process of history matching then takes place, where the model's simulated pressure readings over time are compared to actual known pressure data. Variations from the measured pressures lead to adjustments to the model, until a good pressure history match is achieved.

338. History matching adjustments are typically made to the model parameters about which least is known. A common adjustment parameter is

the rock permeability, which is a measure of the ability of a reservoir rock to conduct the flow of fluids. Initial rock permeability is taken from core samples, which inevitably assess very small areas of the actual reservoir under laboratory conditions that differ from conditions in the reservoir and/or calculated values derived from pressure transient tables.

339. Once history matching is complete, and a satisfactory history match obtained, the assumption is that the reservoir simulation model can be used to predict future reservoir behaviour under a number of different circumstances.

340. One of the characteristics of the reservoir simulation modelling approach to determining blow-out volumes is that, theoretically, specific regard does not need to be given to such factors as well-head damage or constriction. Simulation models essentially treat production and pressure as functions of one another. Adjustments are made to the reservoir parameters until prior production history matches with known pressures. It is then assumed that the model accurately describes the reservoir. It follows that pressure drops recorded after the blow-outs should, in the context of a properly described reservoir, equate to an accurate measurement of lost oil by the model even if no specific surface constriction is imposed. This has been advanced by KPC as an argument in favour of the reservoir simulation method for determining blow-out volumes.

341. The Panel notes that reservoir simulation modelling has a number of limitations as a tool for measuring blow-out volumes. The first of these limitations relates to the availability of data. While the Panel and its representatives were provided complete access to KOC's data archive, some information was simply not available or may be inaccurate. For example, the accurate measurement of water production data did not begin with the commencement of production from the main reservoirs subject to well blow-outs. Data with respect to the production of oil is considered by KOC to be accurate on a field by field basis, but the allocation of that production back to individual wells and individual well completions is considered to be less accurate. Further, pressure test data have not been consistently recorded, and have historically been measured using instruments that may not provide accurate readings.

342. The Panel notes that these data problems are not unusual and have not prevented KPC's consultants or the Panel and its expert consultants from carrying out their tasks. Nevertheless, the limitations of the available data, and in particular of the pressure data, must be kept in mind when relying on this computer modelling technique.

343. Another limitation of reservoir simulation modelling for measuring well blow-out volumes arises from the purpose for which these models are

typically created. Reservoir simulation is a technique normally used as a reservoir management tool. The predictive aspect of the model can for example be used to test the impact of changes to certain production parameters.

344. So, a model may be used to predict the short and long term impact of increasing the number of wells or well completions in a reservoir. Alternatively, a model may be used to predict future production of oil and water based on present production parameters. This information may, for example, be needed to plan for the construction of water handling facilities in a reservoir experiencing an increase in water production over time. The Panel notes that reservoir simulation modelling for the prediction of uncontrolled production rates over a short period of time is within the capability of the technique, but goes beyond its normal usage.

345. Finally, the Panel has been particularly attentive to the adjustment process used in completing the models. As noted earlier, reservoir simulation models are history matched against measured pressures through a process of adjusting initial model parameters such as permeability. This process of adjusting initial model parameters is necessary but is highly subjective. The Panel accordingly instructed its petroleum engineering consultants to review in detail the adjustments made by KPC's reservoir simulation consultants.

346. The Panel has carefully considered the capabilities and the limitations of the reservoir simulation modelling technique as outlined above. The Panel concludes that this technique is, to the extent it is used properly, appropriate for the prediction and estimation of the oil blow-out volumes lost in this case. The Panel will, accordingly, consider the volumes estimated by KPC's reservoir simulation consultants, together with all other available information (such as volumes estimated using the nodal analysis method) in assessing the blow-out volumes suffered in this case.

(iv) Nodal analysis

347. As noted above, nodal analysis is a well-by-well analytical technique focusing on the productive potential of individual wells. Nodal analysis relies on a mathematical description of an individual well with consideration for well bore configuration and reservoir characteristics. In short, nodal analysis is a model of an individual well, while reservoir simulation models an entire reservoir system.

348. Nodal analysis considers the ability of an individual well configuration to produce oil, and it can therefore be said that it is based on "outflow" performance. This contrasts with reservoir simulation models,

which focus on the ability of a reservoir to deliver oil into a well, or "inflow" performance.

349. By focusing on outflow performance, nodal analysis generates what is essentially a maximum production volume per unit of time for each well. In order to replicate real world conditions, and to estimate blow-out volumes, certain limitations must be imposed on the nodal analysis. These limitations include a well's natural rate of decline, increased water production as the aquifer encroaches toward the well, and external well-head constrictions on flow (which might arise from damaged well-heads or the accumulation of coke). The Panel considers that the ability to set adjustment factors to take into account these real world conditions is an advantage of the nodal analysis approach to measuring blow-out volumes.

350. The Panel directed its petroleum engineering consultants to perform their own independent analysis of the loss of oil as a result of the well blow-outs, focusing on the most prolific wells in the largest reservoirs. The Panel directed that this study take into account the real world flow restrictions described above, including decline rates, water production and well-head constrictions on flow.

351. KPC's reservoir simulation consultants also relied to one extent or another on nodal analysis as part of their work. For example, KPC's Consultant 4 prepared a nodal analysis for the two reservoirs they studied. This nodal analysis does not take into account well-head constriction, decline rates or increasing water production, and therefore represents a maximum case blow-out volume only.

352. KPC's Consultant 1 prepared a separate nodal analysis of the volumes of oil lost for its portion of the Greater Burgan, taking into account the production of water, well-head damage and applying a further reduction of 35 per cent to take into account other variables. This report quantified the loss of oil from that reservoir as 708 million barrels of crude oil. This study was also prepared as a prelude to the larger reservoir simulation study.

353. KPC argues that the Panel should rely most on the reservoir simulation study prepared by its Consultant 1 to determine the loss of crude oil from the Greater Burgan. KPC argues that the reservoir simulation model looks at the loss of volume from a reservoir perspective, while eliminating the need to consider back pressure adjustment factors to account for well-head condition.

354. In fact, this argument does underline the basic limitation of nodal analysis for estimating blow-out volumes. As a well-by-well tool, nodal analysis is not capable of considering the impact of a blow-out in a

neighbouring well, whereas production from neighbouring wells in the same reservoir would be considered by a reservoir simulation model.

355. The Panel has carefully considered the capabilities and the limitations of the nodal analysis technique as outlined above. The Panel concludes that nodal analysis is, to the extent it is used properly, appropriate for the prediction and estimation of the oil blow-out volumes lost in this case. Accordingly, the Panel will use the nodal analysis studies prepared by its own petroleum engineering consultants as a point of reference in assessing the reservoir simulation studies prepared by KPC's consultants.

(v) Basic results of the verification programme

a. Well-head restrictions on flow

356. The Panel has carefully considered the photographic and documentary record with respect to the wells affected by blow-outs. The Panel also directed interviews of KOC and KPC personnel and others in Kuwait, and interviews with the well blow-out fire-fighters responsible for controlling many of the wells. Based on the above, the Panel finds that many of the wells affected by blow-outs were not completely open to the atmosphere. Rather, many wells were damaged and either "seeping" or "gushing" oil, rather than blowing out oil in an unrestricted fashion. Other wells were completely open to the atmosphere, with completely severed well-heads.

357. The Panel also finds that some wells, particularly wells that were seeping or gushing oil, experienced an accumulation of extremely hard coke around the well-heads during the blow-out period. This coke appears to have been partially burned oil and super-heated sand. In some cases, the coke accumulation was many metres high and very thick, and the fires could not be controlled until the accumulation of coke was broken away with heavy equipment. In a number of cases, the removal of the coke accumulation resulted in a visibly larger volume of oil being expelled from the wells.

358. The Panel finds that well-head constrictions caused by well-head damage or the accumulation of coke had the effect of reducing the oil blow-out volumes for some wells. In the case of well-head damage the constriction effect was constant during the blow-out period.[17] In the case of coke accumulation, the constriction effect increased during the course of the blow-out period.

359. Accordingly, the Panel instructed its petroleum engineering consultants to take these constriction effects into account in their nodal analysis studies. Modest adjustments were accordingly incorporated into those studies.[18]

b. KPC Consultant 1/Greater Burgan

360. The Greater Burgan losses estimated by KPC's Consultant 1 as 940.50 million barrels of oil (using reservoir simulation) constitute approximately 75 per cent of the total loss of crude oil claimed.

361. This consultant also prepared a nodal analysis estimating the same loss of crude oil to be 708 million barrels of oil, taking into account well-head damage and water production, and applying a 35 per cent reduction for other factors.

362. During the course of its verification programme, the Panel learned that KPC's Consultant 1 used an assumed limit of atmospheric pressure at the bottom of each well in the construction of its reservoir simulation model (a flowing bottom hole pressure of 14.7 psia). This has been described to the Panel as a physically impossible condition which effectively assumes that the productive region of the reservoir is at the surface of the ground, and which ignores the much higher pressures actually prevailing at the bottom of the wells. The Panel notes that KPC's Consultant 1 prepared a reservoir simulation study for another, smaller reservoir where this assumption was not made. The Panel notes further that none of the other consultants retained by KPC set the flowing bottom hole pressure as atmospheric pressure.

363. The Panel decided to subject the report of KPC's Consultant 1, with respect to the Greater Burgan, to the most intense level of scrutiny of all the reports submitted with this claim. This decision was taken because of the immense scale of the losses estimated in that report, which dealt with the largest reservoir at issue in the claim, because of the large difference between the reservoir simulation and the nodal analysis estimates prepared by that consultant, and because of the assumption of a flowing bottom hole pressure limit of 14.7 psia. The largest portion of the Panel's technical verification programme was therefore focused on the losses described for the Greater Burgan by KPC's Consultant 1.

364. The Panel's own petroleum engineers prepared an independent nodal analysis of a large number of the most prolific wells and completions in the Greater Burgan. This nodal analysis calculated a maximum potential flow rate for each well, which was then adjusted for natural reservoir decline rates and for water production. Further modest adjustments were made for well-head damage and for coke accumulation. The calculated loss of oil using this method was 597.2 million barrels of oil for this portion of the Greater Burgan. The Panel notes that its consultants were unable to replicate the nodal analysis work of KPC's Consultant 1.

365. In addition, a number of sensitivity analyses were requested of KPC's Consultant 1 as part of the Panel's technical verification programme of its reservoir simulation model. These sensitivity analyses were designed to test the impact of changes to key parameters in the model.

366. One of the parameters that was changed was the flowing bottom hole pressure, and a new pressure calculated based on the hydrostatic head of the column of fluid in the well (taking into account individual well depths) was substituted. Another parameter that was changed was the maximum flow potential flow rate input into the model for each well. These rates had to some extent been derived from KPC Consultant 1's nodal analysis study. KPC's Consultant 1, at the Panel's direction, calculated the loss of oil by adjusting both of these parameters in the reservoir simulation model. The result, after adjustment by the Panel's petroleum engineering consultants, was 586.6[19] million barrels of oil for this portion of the Greater Burgan.

367. KPC has argued that this sensitivity analysis should not form the basis of a decision by the Panel. In particular, KPC's Consultant 1 has argued that the various sensitivity analyses were done without subsequent history matching of the underlying model. Nevertheless, the Panel notes that these sensitivity runs were designed to test the impact of correcting for certain deficiencies in the underlying reservoir simulation model, and as such the result of these runs is a useful point of reference for the Panel in determining blow-out volumes. However, the sensitivity runs did provide information with respect to history matching subsequent pressures and found that the analyses compared favourably with the actual pressure measurements on an average field basis.

368. The Panel finds that it cannot accept the findings of KPC's Consultant 1 with respect to the Greater Burgan. The use of a flowing bottom hole pressure of 14.7 psia, coupled with the use of maximum potential flow rate for each well derived from a nodal analysis study that could not be replicated, lead the Panel to this decision.

369. The Panel notes that its petroleum engineering consultants calculated a loss of oil from this portion of the Greater Burgan in the amount of 597.2 million barrels of oil using the nodal analysis method, and that this figure has been effectively confirmed through the sensitivity analysis conducted at the Panel's request and adjusted as noted above. The difference between these two approaches is less than 2 per cent, which the Panel finds to be an acceptable degree of accuracy. The Panel therefore finds that the nodal analysis work of its own petroleum engineering consultants most closely reflects the loss of oil from this portion of the Greater Burgan, and concludes that the total loss due to the well blow-outs for this reservoir was 597.2 million barrels of oil.

c. KPC Consultant 4/Raudhatain and Sabiriyah KPC Consultant 2/Minagish

370. The Raudhatain losses due to well blow-outs were estimated by KPC's Consultant 4 as 128.86 million barrels of oil, while the same consultant estimated the Sabiriyah losses to be 65.02 million barrels of oil. The Minagish losses were estimated by KPC's Consultant 2 to be 49.34 million barrels of oil. These losses constitute approximately 19 per cent of the claimed loss of crude oil due to well blow-outs.

371. The Panel directed its petroleum engineering consultants to prepare an independent nodal analysis of a large number of the most prolific wells and completions in these reservoirs. As with the nodal analysis work undertaken for the Greater Burgan, the results were adjusted for natural reservoir decline rates and for water production. Further modest adjustments were made for well-head damage and for coke accumulation.

372. For the Raudhatain and Sabiriyah losses estimated by KPC's Consultant 4, the calculated loss of crude oil using this nodal analysis method was within 1 per cent of the claimed amount. For the Minagish losses estimated by KPC's Consultant 2, the calculated loss of crude oil using this nodal analysis method was within 0.5 per cent of the claimed amount. The Panel notes that the nodal analysis work performed by its petroleum engineering consultants effectively confirmed the volumes calculated by these consultants using the reservoir simulation method. The Panel therefore finds that the oil lost due to well blow-outs for these reservoirs is the volume claimed by KPC.

d. The remaining reservoirs

373. The losses claimed for the remaining reservoirs[20] account for less than 6 per cent of the total claimed loss of crude oil due to the well blow-outs.

374. The reservoir engineers responsible for assessing these losses were all interviewed, with one exception. All of the reports were reviewed in detail by the Panel's petroleum engineers. This review included a comparison of model inputs with primary data received from KPC. The Panel requested a number of further documents with respect to several of these reports, and those documents were received. No methodological deficiencies were noted, and the Panel notes that all the studies were prepared using the reservoir simulation modelling techniques described above. Given the relatively small volumes of crude oil claimed in these five studies, and the lack of methodological deficiencies, the Panel did not request independent nodal analysis with respect to these reservoirs.

375. In the end result, and for the reasons described above, the Panel finds that the oil lost due to well blow-outs for these five reservoirs[21] is the volume claimed by KPC.

(vi) Panel's conclusions regarding blow-out volume

376. In conclusion, the Panel finds that the blow-out volume for the portion of the Greater Burgan studied by KPC Consultant 1 is 597.2 million barrels of crude oil. The Panel finds that the blow-out volumes for the remaining reservoirs affected by blow-outs are as claimed by KPC. These blow-out volumes can be summarised as follows:

Table 18. Blow-out volumes

Field	Consultant	Claimed blow-out volumes (crude oil) (MMbbl)	Recommended blow-out volumes (crude oil) (MMbbl)
Greater Burgan	1	940.50	597.20
	2	10.01	10.01
Main Burgan	3	13.97	13.97
Raudhatain	1	26.28	26.28
	4	128.86	128.86
Sabiriyah	4	65.02	65.02
Minagish	2	49.34	49.34
Umm Gudair	5	18.85	18.85
	2	2.67	2.67
Total		1,255.50	912.20

(b) Valuation of the fluid loss

377. As described in Table 18, supra, the Panel has determined that an amount of crude oil equal to 912.2 million barrels of crude oil (the "blow-out volume") was destroyed or lost in blow-outs that occurred as a direct result of Iraq's unlawful invasion of Kuwait. For reasons set forth at para. 199, supra, 835.3 million barrels (the "PSL volume") of the blow-out volume is accounted for by the PSL.[22] The Panel must therefore determine how to value the rest of the oil that was lost in the blow-outs (the "proven FL volume"). The proven FL volume is 76.9 million barrels.

(i) KPC's valuation method and Iraq's objections to it

378. KPC claims that if Iraq had not invaded Kuwait it could have produced the claimed FL volume of 417 million barrels as well as the PSL volume between 2 August 1990 and 30 June 1993 with its pre-invasion production capacity. For this reason it has valued the claimed loss as if it occurred during this period.

379. Iraq does not agree with this approach. In its reply to KPC's claim, Iraq argues that Kuwait did not have the capacity to produce the claimed FL volume as well as the PSL volume during the claimed loss period.

380. In addition, Iraq states that, even if KPC did have the required production and marketing capacity, it would not have produced the claimed FL volume between 2 August 1990 and 30 June 1993 because doing so would have caused a drastic decrease in oil prices and a deterioration of Kuwait's relations with other OPEC members.

381. Because Kuwait would not have produced the claimed FL volume during the claimed loss period, Iraq argues that the claimed loss, if any, should be treated as a loss of reserves. Based on this approach, while the physical loss of the claimed FL volume might have occurred during the blow-outs, the economic impact of the loss will not occur until the absence of the lost volume from Kuwait's reservoirs begins to affect KPC's ability to produce crude oil.

382. Accordingly, Iraq states that the only appropriate way to value the claimed loss is to determine how much income KPC will not earn in the future as a result of losing the claimed FL volume and to discount that loss to its present value at the time of the award. It points out that, due to the abundance of Kuwait's oil reserves, the economic impact of the fluid loss will not be felt for many years. As a result, Iraq claims, the present value of the loss is negligible.

383. For the purpose of this portion of the report, the Panel will refer to KPC's valuation method herein as valuation in the "present" and Iraq's as valuation in the "future".

(ii) The Panel's valuation approach

384. As stated at para. 314, supra, the Panel believes that the objective of any compensation award with respect to the FL claim should be to place KPC in the same position it would have occupied if it had not lost the proven FL volume.

385. The Panel finds that the proven FL volume can be valued in the "present" if, in a no-invasion scenario, KPC would have produced at least an amount of crude oil equal to the entire proven blow-out volume -- including both the PSL volume and the proven FL volume -- during the period when its ability to produce crude oil was impaired as a result of Iraq's invasion and occupation of Kuwait (the "FL loss period") in addition to the amount of crude oil it actually produced during that period.

386. To determine whether this was the case, it is necessary to compare KPC's actual production of crude after Iraq's invasion of Kuwait to the best estimate of its production in a no-invasion scenario.

387. In order to do so, the Panel has, with the assistance of its petroleum economics consultants, reviewed data with respect to OPEC quota allocations and crude oil demand and supply prior to and after Iraq's invasion of Kuwait.

388. The Panel finds that the most accurate way to estimate Kuwait's production in a no-invasion scenario is by reference to Kuwait's pre-invasion share of the formal OPEC production ceiling and to actual production by OPEC.

389. Immediately prior to the Iraqi invasion, Kuwait's OPEC quota allocation was equal to 6.7 per cent of the formal OPEC production ceiling. However, the Panel notes that, at that time, Kuwait and certain other OPEC members with excess production capacity had consistently produced at rates that exceeded their OPEC quota allocations. Kuwait continued to produce above its quota when, after its liberation, it regained the capacity to do so.

390. Due to such overproduction, the Panel considers that it would not be accurate to restrict Kuwait's projected no-invasion production to 6.7 per cent of the formal OPEC ceiling during the loss period. Instead, the Panel finds that it is correct to assume that Kuwait would have produced at a rate of 6.7 per cent of OPEC's actual production.[23]

391. The corollary of this finding is that the period during which KPC's crude oil losses were incurred lasted from the date of Iraq's invasion of Kuwait until the day when Kuwait was able to return to production of 6.7 per cent of OPEC's actual production. The Panel finds that Kuwait would have resumed production at this rate approximately on 31 December 1992. This conclusion is based on OPEC's production after the invasion and on Kuwait's production after the end of the Iraqi occupation.

392. In the case of OPEC's production, the Panel notes that OPEC's crude oil production was briefly brought below its pre-invasion level as a result of Iraq's invasion of Kuwait and the subsequent absence of those countries from the world oil market; however, the supply of oil returned to normal levels when other OPEC members increased their production to compensate for the shortfall.

393. With respect to the period of abnormal crude oil supply, the Panel has, with the assistance of its petroleum economics consultants, projected

OPEC's no-invasion production rate. With respect to the period that followed it, the Panel was able to refer to OPEC's actual production.

394. In the case of Kuwait's production, the Panel referred to Kuwait's actual production after the end of the Iraqi occupation, which, as discussed, was below normal levels due to the blow-outs and other damage to Kuwait's production infrastructure.

395. The Panel finds that, based on a share of 6.7 per cent of OPEC's actual production, Kuwait would have produced at an average rate of at least 1.587 million barrels per day during the loss period in a no-invasion scenario, approximately 87,000 bpd more than the Kuwaiti production rate that is assumed in the PSL claim. Based on this production rate, Kuwait would have produced a total of at least 1,402 million barrels of crude oil during the loss period. Of this volume - after deduction of AOC's production - KPC would have produced at least 1,286 million barrels of crude oil. This amount exceeds the sum of the crude oil actually produced by KPC during the FL loss period - which the Panel finds, based on production records provided by KPC, was equal to 373 million barrels - and the proven blow-out volume of 912.2 million barrels.

396. The Panel finds, after reviewing relevant market data, that production of the proven blow-out volume as well as KPC's actual production during the FL loss period would not have caused a material decrease in oil prices. Therefore, it does not need to further consider Iraq's contention, stated at para. 295, supra, that Kuwait would not have produced above the level stated in the PSL claim in order to avoid a drop in oil prices and a deterioration of its relations with other OPEC member states.[24]

397. The Panel therefore finds that, if Iraq had not invaded Kuwait, KPC would have produced at least the proven blow-out volume as well as its actual production of crude oil during the FL loss period. It follows that the proven FL volume can be valued in the "present", employing the no-invasion and actual prices that prevailed during the FL loss period.

(iii) Valuation of proven fluid loss

398. KPC claims that the value of the claimed fluid loss is equal to US$ 6,640,516,049, which comprises US$ 6,282,323,692 for crude oil and US$ 444,136,561 for associated gas products. KPC deducts US$ 85,944,204 from this amount to account for revenue received from the sales of weathered crude retrieved after the blow-outs.

399. As noted, KPC relies on the KPC accountants' report and the KPC price report to value its fluid losses. KPC applies adjusted prices of crude oil

and processed gas products as presented in these reports to a volume of 417 million barrels of crude oil.

400. As discussed at para. 377, supra, the Panel finds that the proven FL volume is 76.9 million barrels, instead of the 417 million barrels claimed by KPC. The Panel also finds that KPC could have sold this volume as a mix of crude oil, propane and butane during the loss period. In the case of lean gas, the Panel has already found, at para. 225, supra, that the lean gas requirements of the Kuwait MEW, the only purchaser of such product from KPC, had already been filled by the quantity of lean gas accounted for in the PSL claim. Because KPC has not proven that it could have sold further quantities of lean gas to other purchasers, the Panel finds that no compensation can be awarded with respect to lean gas losses claimed in the FL claim.

401. Finding that the proven fluid loss should be valued as a sales mix of crude oil, propane and butane, the Panel values this loss as follows. First, the Panel applies the verified ratios used by KPC in the PSL claim to calculate the volumes of crude oil, propane and butane that KPC could have produced and sold from the proven FL volume.

402. Then, the Panel multiplies the crude oil and the processed gas products volumes by the same verified prices that KPC employs in the PSL claim for the relevant periods, adjusted for the relevant price differentials. The Panel has already found, at para. 190, supra, that these prices do not result in an overstatement of KPC's claim.

403. Based on the above calculations, the Panel finds that KPC lost sales revenues it would have realised from the proven FL volume as follows: US$ 1,199,335,851 for crude oil, US$ 32,110,479 for propane and US$ 26,678,506 for butane. Thus the Panel finds that KPC's total lost sales revenue is US$ 1,258,124,836.

404. As discussed at para. 400, supra, the lean gas volume that could have been produced from the proven FL volume would not have been sold during the loss period and, therefore, the Panel recommends no compensation be awarded for this lean gas.

405. The Panel has considered whether KPC enjoyed any cost savings that should be deducted from its claim. Based on its review of relevant evidence, the Panel finds that KPC's production, processing and other costs with respect to crude oil and processed gas are fixed. As a result, the Panel concludes that these have already been properly allocated to the PSL claim, and that no deduction is necessary in the case of the FL claim.

406. Further, after a review of KPC's accounts and sales data, the Panel finds that KPC has correctly deducted US$ 85,944,204 from its claim to account for sales of weathered crude.

407. Based on the above calculations, the Panel finds that KPC would have earned revenues of US$1,172,180,632 from the proven FL volume.

6. Conclusion and recommendation

408. The Panel recommends compensation in the amount of US$1,172,180,632 for KPC's fluid loss claim. The recommendation of the Panel is summarised as follows.

Table 19. KPC's fluid loss claim: recommended compensation

Loss element	Claim amount (US$)	Panel's adjustments (US$)	Panel's recommendation (US$)
Crude Oil	6,282,323,692	(5,082,987,841)	1,199,335,851
Gas			
Propane	155,072,991	(122,962,512)	32,110,479
Butane	130,603,413	(103,924,907)	26,678,506
Lean gas	158,460,157	(158,460,157)	0
Total value of lost reservoir fluids	6,726,460,253	(5,468,335,417)	1,258,124,836
Proceeds from sales of recovered crude	(85,944,204)		(85,944,204)
Total	6,640,516,049	(5,468,335,417)	1,172,180,632

VI. INCIDENTAL ISSUES

A. Interest

409. All claim figures in the body of this report are net of any individual interest claims advanced by the claimants.

410. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16, the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.[25]

411. The task of the Panel, therefore, is to determine the date from which interest should run for the losses for which compensation is recommended in this instalment.

412. In each claim in this instalment for which compensation is recommended, the claim is based on a loss that occurred more or less regularly over a period of time. In the FL claim, the loss is valued on a similar basis. For this reason, the Panel finds that using the midpoint of the relevant period as the start date for interest on the awards represents the most reasonable date to use in calculating interest.

413. In accordance with these determinations, the following is a summary of the recommendations for compensation of the Panel, along with the date from which interest awards will run:

Table 20. Summary of recommendations by loss type with interest start dates

Name of claimant (and claim)	US$ award amount	Interest start date
Arabian Oil Company	21,967,260	1 January 1991
Kuwait Petroleum Corporation		
Production and sales loss claim	14,750,324,488	16 July 1992
Fluid loss claim	1,172,180,632	17 October 1991

414. The Panel notes that the Government of Kuwait has filed a claim for lost return on investments liquidated during the occupation and subsequent reconstruction period. This claim is assigned to the "F3" Panel. The Panel has been informed that the "F3" Panel will consider whether any offset should be made to the claims of the Government of Kuwait as a result

of the award of interest made herein in connection with the Production and Sales Loss claim of Kuwait Petroleum Corporation.

B. Claim preparation costs

415. All claim figures in the body of this report are net of any claim preparation cost claims advanced by the claimants. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of the claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VII. RECOMMENDATIONS

416. The Panel's recommendations with respect to the fourth instalment of E1 claims is summarised in the following table.

Table 21. Panel's recommendations: fourth instalment of E1 claims

Claimant	Claim number	Claim amount (US$)	Recommended compensation (US$)
Arabian Oil Company	4000959	562,670,412.43	21,967,260
Saudi Arabian Oil Company	4002637	749,375,858.00	nil
Kuwait Petroleum Corporation			
Production and sales loss	4003197	14,973,000,000.00	14,750,324,488
Fluid loss	4004439	6,640,516,049.00	1,172,180,632
Total		22,925,562,319.43	15,944,472,380

Geneva, 14 April 2000

(Signed) Mr. Allan Philip
Chairman

(Signed) Judge Bola Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Notes

[1] "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

[2] Japan Petroleum Trading Company, Ltd. entered into the concession agreement with Saudi Arabia but later assigned all its rights and obligations under the 1957 concession agreement to AOC in an assignment agreement dated 19 February 1958. AOC then entered into a concession agreement with Kuwait in July 1958.

[3] In 1922, a Neutral Zone was established between Saudi Arabia and Kuwait in a 2,000 square mile area between the two States. Subsequently, a treaty established that both States held an undivided interest in the mineral resources in the Neutral Zone and equal rights in the administration of those resources. Both States thereafter granted concessions to foreign companies to operate in the Neutral Zone. On July 1965, a partition treaty between the two States divided the Neutral Zone into two partitioned areas each subjected to the sovereignty of one State. The Neutral Zone then became known as the Partitioned Neutral Zone ("PNZ"). Although the treaty divided the areas in which each State had an interest, it did not alter the sub-surface rights of the party States, which continued to be owned in undivided 50 per cent shares.

[4] An oil price reporting service.

[5] UNCC Claim No.4005977, "E1" Claims, Instalment 8.

[6] See E1 Second Instalment Report, para. 454.

[7] Id.

[8] The Panel has previously discussed the structure of Kuwait's oil industry and KPC's relationship with Kuwait and with the other companies in the Kuwaiti oil sector with which KPC is affiliated. *See* Report and Recommendations Made By The Panel Of Commissioners Concerning the Second Instalment of "E1" Claims (S/AC.26/1999/10) (the "Second Instalment Report") paras. 74-79. In this fourth instalment report, references to "KPC's" facilities, assets or operations include those facilities, assets and operations of the affiliated companies.

[9] The figure of 1,256 million barrels is given in KPC's Statement of Claim. This figure is based on a set of volume figures that sum to 1,255.50. This latter figure is used in the Panel's discussion.

[10] KPC defines the production loss period as the period between 2 August 1990 and December 1992. KPC uses this period because KPC's average daily crude oil production had returned to at least 1,331,000 bpd - i.e., KPC had begun to produce its full available quota balance - in December 1992. KPC asserts that the last month in which its average daily production failed to reach its average daily quota balance was November 1992. Therefore, it uses this month as the last month of the loss period.

[11] Claim of Kuwait National Petroleum Company (UNCC Claim no. 4003070), currently assigned to the eighth instalment of "E1" claims.

[12] See the Panel's discussion of extraordinary profits in "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of "E1" Claims" (S/AC.26/1999/13) paras. 468-472.

[13] To simplify certain discussions in the PSL and FL claims, the Panel has rounded the amounts in the volume discussion. In the PSL claim, the amounts are rounded to the nearest million barrels. Thus, the 4 million barrel figure is a rounded figure; the precise amount of the overstatement is 3,676,030 barrels. The calculation of the loss is done, however, using the precise figure.

[14] "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of "F3" Claims" (S/AC.26/1999/24), paras. 86-87.

[15] KPC also alleges that the fluid loss is a compensable direct loss under paragraph 35 of Governing Council decision 7, which mentions claims for depletion of natural resources in a discussion on the criteria for processing claims. Although decision 7 does not specifically state that depletion of natural resources is compensable, it follows from the inclusion of this type of loss in the discussion of claims processing that the Governing Council contemplated that such losses would be compensable if found to be direct. Because the Panel reaches its recommendation on other grounds, however, it does not make any finding on the proper interpretation of paragraph 35.

[16] Chorzow Factory (1927) PCIJ Series A, No. 17 at 47.

[17] The Panel notes that a well with a constricted well-head might produce less oil initially, but the production of oil might remain relatively constant for long period of time. A well with a completely severed well-head will produce at a higher initial rate, but decline more quickly.

[18] The precise extent and effect of constrictions at of the well-heads is difficult to calculate, but this issue was studied by the Panel's petroleum engineering consultants in detail. In general, the relationship between a percentage restriction in the opening to the surface and the impact on total flow rates is not linear. For example, a 25 per cent restriction in the opening to the surface would, in the subject well-heads, have a modest impact on total flow rates.

[19] This figure has been adjusted to take into account a variation between the reservoir simulation model report prepared by this consultant for KPC's claim, and the base case used as a starting point for the various simulation sensitivity runs. This difference has been attributed by KPC's Consultant 1 to refinements made to the model after the completion of their report. This figure has also been adjusted to take into account controlled production after the liberation of Kuwait but prior to the last of the wells being controlled. This controlled production is estimated to be 42.2 million barrels of oil.

[20] These are the reservoirs covered by the following studies: KPC Consultant 2/Greater Burgan, KPC Consultant 3/Main Burgan, KPC Consultant 1/Raudhatain, KPC Consultant 2/Umm Gudair and KPC Consultant 5/Umm Gudair.

[21] See note 20, supra.

[22] As noted in note 13, supra, the Panel has rounded the amounts in the volume discussions to simplify the discussion. In the FL claim, the Panel has rounded the volume amounts to the nearest 100,000 barrels, instead of the nearest million barrels, as was done in the PSL claim. Thus, the PSL volume figure is shown in the PSL claim as 835 million barrels and in the

FL claim as 835.3. In both cases, however, the precise amounts are used in the calculation of the losses.

[23] The Panel finds that Kuwait's share of the OPEC ceiling would not have decreased in a no-invasion scenario. Individual shares of the OPEC ceiling do not usually decrease unless a member country does not have the capacity to produce its current or prospective quota allocation. Kuwait's pre-invasion production capacity was sufficient to keep up with any foreseeable increase in the OPEC ceiling.

[24] The Panel notes that Iraq's argument was based on the blow-out volume figure claimed by KPC of 1,255.50 million barrels of crude oil. As set forth in Table 18, supra, the proven blow-out volume is 912.2 million barrels of crude oil. The additional production required to produce the proven blow-out volume as well as KPC's actual production during the FL loss period is, therefore, significantly smaller than that assumed by Iraq in its analysis.

[25] "Awards of Interest" (S/AC.26/1992/16).

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Security Council

Distr.
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29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the fourth instalment of "E1" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fourth instalment of "E1" claims, covering four claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 416 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Japan	1	-	562,670,412.43	21,967,260.00
Kuwait	2	-	21,613,516,049.00	15,922,505,120.00

1/ The text of the report appears in document S/AC.26/2000/16.

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Saudi Arabia	-	1	749,375,858.00	nil
Total	3	1	22,925,562,319.43	15,944,472,380.00

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100 (S/AC.26/Dec.100 (2000)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex VI

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29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF "E2" CLAIMS

GE.00-63685

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Decision No.	Title	Document No.
7	Criteria for additional categories of claims	S/AC.26/1991/7/Rev.1
9	Propositions and conclusions on compensation for business losses: Types of damages and their valuation	S/AC.26/1992/9
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
10	Provisional rules for claims procedure	S/AC.26/1992/10
16	Awards of interest	S/AC.26/1992/16

Table 2. List of Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
D(2.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above US$100,000 (category "D" claims)	S/AC.26/1998/11
E1(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E1" claims	S/AC.26/1999/13
E2(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims	S/AC.26/1999/6
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E3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims	S/AC.26/1998/13
E3(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E3" claims	S/AC.26/1999/5
E3(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E3" claims	S/AC.26/1999/14
E4(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E4" claims	S/AC.26/1999/4

Short name	Title	Document No.
E4(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E4" claims	S/AC.26/2000/6
E4(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E4" claims	S/AC.26/1999/18
F1(1.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1997/6
F1(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "F1" claims	S/AC.26/1998/12

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its twenty-first session in 1996, appointed the present Panel of Commissioners, composed of Messrs. Bernard Audit (Chairman), José María Abascal and David D. Caron (the "Panel" or "E2 Panel") to review "E2" claims. These claims were submitted by non-Kuwaiti corporations, public sector enterprises and other private legal entities (excluding oil sector, construction/engineering, export guarantee/insurance and environmental claimants). This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the "Provisional Rules for Claims Procedure" (the "Rules"), concerning the fifth instalment of "E2" claims.

2. The instalment consists of 57 claims submitted by corporations primarily operating in the banking and financial sectors. These claims were selected by the secretariat of the Commission (the "secretariat") from the "E2" claims on the basis of criteria established under the Rules. These criteria include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. The procedure used by the Panel in processing the claims is described in section II below.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements have been stated in detail in this Panel's report and recommendations concerning the first instalment of "E2" claims. 1/ Within this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable and in fact incurred. The implementation of these successive steps with regard to the present instalment is described in sections III to V, followed by the Panel's recommendations in section VI.

I. OVERVIEW OF THE CLAIMS

4. The claimants are non-Kuwaiti companies which were engaged in banking, investment activities, insurance and other financial services at the time of Iraq's invasion of Kuwait on 2 August 1990. 2/ Most claimants made payments or otherwise extended credit, primarily to Iraqi or Kuwaiti parties, under lines of credit, loans, letters of credit, promissory notes and guarantees. These claimants allege that they did not receive monies due under the terms of these various financial contracts as a result of Iraq's invasion and occupation of Kuwait.

5. These and other claimants also allege that their business operations in the Middle East region sustained losses as a result of Iraq's invasion and occupation of Kuwait. Such losses include decline in business, losses on the sale of assets, increased costs of operations, including salary and termination payments, evacuation costs, and tangible property losses.

6. The various types of losses, as described by the claimants, are discussed in greater detail in section IV below.

II. PROCEDURAL MATTERS

7. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant legal and factual issues raised by the claims in his twenty-seventh report dated 26 April 1999 ("article 16 report"). Pursuant to paragraph 3 of article 16, a number of Governments, including the Government of Iraq, submitted their information and views on the Executive Secretary's report. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules and were considered by the Panel in the course of its deliberations.

8. The secretariat made a preliminary assessment of the claims in order to determine whether each claim met the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

9. Given the large number of claims under review, the volume of supporting documentation submitted with the claims, and the complexity of the verification and valuation issues, the Panel made use of expert advice pursuant to article 36 of the Rules. This advice was provided by accounting consultants (the "expert consultants").

10. A preliminary review of the claims was undertaken by the secretariat in order to identify any additional information and documentation which might assist the Panel in properly verifying and valuing the claims. Pursuant to article 34 of the Rules, notifications were dispatched to the claimants ("article 34 notifications"), in which claimants were asked to respond to a series of standard questions and to provide additional documentation. The information provided by the claimants in response to the article 34 notifications was also considered by the Panel in its determination of the claims.

11. The Panel commenced its review of the claims in this instalment on 13 October 1999, the date upon which the claims were presented to it by the Executive Secretary pursuant to article 32 of the Rules.

12. In a procedural order dated 14 January 2000, the Panel instructed the secretariat to transmit to the Government of the Republic of Iraq the documents filed by five claimants for claims based on letters of credit issued by Iraqi banks. Iraq was invited to submit its comments on such documentation and to respond to questions posed by the Panel by 17 July 2000. The Panel has transferred these claims to a future instalment for a final determination of their compensability, as is further described in paragraph 59, infra.

13. In verifying the claims, valuing the alleged losses, and determining the appropriate amount of compensation, if any, the Panel also considered claim-specific reports prepared by the expert consultants under the Panel's supervision and guidance. These reports were based upon documents

submitted by each claimant, including their responses to the article 34 notifications. The Panel applied the procedures and methods described in its previous reports in verifying and valuing the losses alleged. 3/ Where necessary, the Panel adapted these procedures and methods to take into account the nature of the particular claims in this instalment.

14. Paragraph 3 of article 35 of the Rules provides that corporate claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". The Panel found that several claims, or portions thereof, were fundamentally defective in that each claimant failed to submit documents other than a claim form and a brief statement of claim. The lack of supporting evidence was absolute and prevented the Panel from understanding the losses claimed and ascertaining whether such losses were compensable. For these reasons, the Panel finds that such claims, or portions thereof, are not compensable.

III. LEGAL ISSUES

15. The claims in the present instalment that are based on loans, guarantees and letters of credit raise new legal issues that are addressed in this section. The claims based on loans include loans that were not tied to a particular underlying transaction ("general purpose" loans) and loans that were expressly made to finance a particular project ("specific purpose" loans). All of the general purpose loans and some of the specific purpose loans were rescheduled, a circumstance also bearing on the Panel's analysis.

16. In deciding whether it has jurisdiction over these claims, the Panel must apply the findings in its first report in respect of the clause in paragraph 16 of Security Council resolution 687 (1991), which excludes from the jurisdiction of the Commission "the debts and obligations of Iraq arising prior to 2 August 1990" (the "arising prior to" clause). In that report the Panel concluded, with reference to the construction and supply claims before it, that when the performance giving rise to the debt had been rendered by a claimant more than three months before Iraq's invasion and occupation of Kuwait, that is, prior to 2 May 1990, a claim based on payment owed for such performance is to be considered as a debt or obligation arising prior to Iraq's invasion and occupation of Kuwait and is therefore outside the jurisdiction of the Commission. 4/

17. In subsection A, below, the Panel considers the applicability of this rule to the general purpose loans that are before it; in subsection B, specific purpose loans; in subsection C, rescheduled loans; in subsection D, guarantees; in subsection E, letters of credit; and in subsection F, refinancing arrangements.

A. General purpose loans

18. Several claims under consideration are based on loans to Iraqi parties where the loan agreements did not state a particular purpose to which the funds were to be applied. The Panel gives consideration to the issue as to when a borrower's obligation under these loans should be considered to have arisen for the purpose of the "arising prior to" clause.

19. In response to the Commission's article 16 report that solicited comments on this issue, three Governments put forward their views regarding the application of the "arising prior to" clause. Two Governments, including the Government of Iraq, have taken the position that where the claimant-lender disbursed funds under a loan agreement before 2 August 1990, a claim based on non-payment of the loan is not within the Commission's jurisdiction. The third Government expressed the view that the Commission's jurisdiction should be based upon the date on which repayments under the loan became due and payable, relying on the difference in the nature of the claimant's performance between a supply or construction contract on the one hand, and a loan contract on the other,

and noting that generally the obligation to repay does not arise on the date on which the monies are made available to the debtor.

20. In the course of its consideration of this issue and the views just described, the Panel determined that all of the general purpose loans made to Iraqi parties in the present instalment are rescheduled loans. For the reasons explained in subsection C, the circumstance of rescheduling in itself places these loans outside the jurisdiction of the Commission. The Panel therefore does not find it necessary to determine the effect of the application of the "arising prior to" clause to non-rescheduled general purpose loans at this time and defers such consideration until a claim squarely presents the issue.

B. Specific purpose loans

21. Most loan agreements presented to the Panel in this instalment either specified the particular purpose for which the funds were provided or designated a particular third-party supplier to whose account the funds were to be directly transmitted. For instance, the funds were to be used to pay a contractor in a construction contract, or to pay the seller of goods in an import transaction. In addition, the loan agreements contained extensive references to these underlying transactions; in fact, the agreements often conditioned the release of the funds on the completion of the underlying transaction or a particular part thereof, such as completion by the contractor of a particular stage of the construction contract project, or shipment by the seller of the goods covered by the sales contract. The Panel distinguishes such specific purpose loans from the general purpose loans discussed above.

22. The Panel notes that the specific purpose loans before it are payment mechanisms for the underlying transactions (construction, sale or other provision of goods or services), and as such are intimately related to them. The Panel finds that the "arising prior to" clause must be applied to such intimately related transactions so that no part of an old debt comes within the jurisdiction of the Commission. Moreover, although the Panel has before it claims by lenders based on the associated loan, the Panel notes that claims before other Panels, involving similarly related transactions, are brought instead by contractors and exporters. This circumstance buttresses the need to consider such loans and their underlying transactions as a whole to avoid disparate treatment among claimants based on their position in the overall arrangement. In light of these considerations, the Panel determines, with respect to the claims under review, that the claims based on an associated specific purpose loan must be subject to the same jurisdictional criteria as those that apply to the underlying transaction. Therefore, where the performance of the underlying transaction was completed prior to 2 May 1990 and is, as such, outside the Commission's jurisdiction, the Panel finds that the associated specific purpose loan, even if payable after 2 May 1990, is likewise outside the Commission's jurisdiction.

C. Rescheduled loans

23. A number of claims under consideration are based on loans to Iraqi parties where the original terms of payment were later renegotiated and payments were rescheduled. The question for the Panel's determination is the application of the "arising prior to" clause in the case of rescheduled loans.

24. The Panel addressed the issue of rescheduling and other deferred payment arrangements in its first report. There it found that:

> "The distortion of normal conditions in Iraq's international trade during the mid- to late 1980s resulting from Iraq's foreign debt was also manifest in the fact that it no longer paid its then existing debts on originally-contracted terms, but required deferments in order to allow it the time needed to gather the funds necessary to make payments that became due and to clear debts that were overdue." 5/

The Panel recognized that, under rescheduling agreements, the old debt might legally be regarded as new under applicable municipal law. However, the Panel found that such rescheduling and other deferred payment arrangements with Iraqi debtors went to the heart of what the Security Council described in resolution 687 (1991) as the debt of Iraq "arising prior to 2 August 1990". 6/ Correspondingly, the Panel noted that the Security Council did not intend that the Compensation Fund be used for the payment of creditors unpaid long before Iraq's invasion and occupation of Kuwait. 7/ Therefore, the Panel concluded that the rescheduling of old and overdue debts, regardless of their status under municipal law, did not render them "new" debts for purposes of the "arising prior to" clause. 8/

25. The Panel determines that this reasoning likewise applies to rescheduled loans, and, as a consequence, finds that claims based on such loans are not within the jurisdiction of the Commission. 9/

D. Guarantees

26. In a number of the claims under review, the Central Bank of Iraq acted as guarantor for loans or other debts by an Iraqi party, and undertook to pay any outstanding amount upon default by the debtor. These claims require the Panel to address the question of when the guarantor's obligation arose for the purpose of the "arising prior to" clause.

27. The Panel recognizes that under general principles of contract law the undertaking of the guarantor is distinct from that of the debtor. The Panel also recognizes, however, that for the claims under consideration the two obligations are intimately related as the purpose of the guarantee is to secure repayment of the debt. Accordingly, when the debt arose prior to 2 May 1990, the guarantor's obligation will likewise be considered to have arisen prior to 2 May 1990 and is not within the jurisdiction of the Commission. 10/

E. Letters of credit

28. A number of claimants are banks which paid the beneficiaries of letters of credit issued by Iraqi banks to finance the purchase of goods by Iraqi buyers. These claimants allege losses arising from the failure of the Iraqi issuing banks to honour their reimbursement obligations. 11/ The question for determination by the Panel is when the obligation of the Iraqi issuing banks arose within the meaning of the "arising prior to" clause.

29. The Panel notes that the E2A Panel has previously considered the closely related situation of claims brought by the beneficiary of a letter of credit, that is, the exporter of goods in that case, rather than by the paying bank. 12/ In the claims before the E2A Panel, the beneficiary-exporter sought compensation for the failure of the Iraqi bank to honour a letter of credit that it had issued to finance the purchase of goods shipped by the beneficiary-exporter to an Iraqi importer. 13/ For the purposes of the "arising prior to" clause, the E2A Panel found that it is the exporter-claimant's presentation of documents, as specified in the letter of credit, that completes its performance and triggers the issuing bank's obligation to honour the letter of credit. Consonant with this Panel's findings in its first report, the E2A Panel concluded that an exporter's claim is within the Commission's jurisdiction only where the documents were presented on or after 2 May 1990 to the bank with which the claimant dealt. 14/ Further, to ensure that Iraq's old debt would not be masked by unusually long or deferred payment terms, the E2A Panel added the condition that the period between the shipment of goods and the presentation of documents must not have exceeded 21 days (that being considered the normal period for the presentation of documents after shipment). 15/

30. This Panel likewise finds that the relationship of the letter of credit to the underlying transaction should be considered when applying the "arising prior to" clause to a claim based on the letter of credit. Accordingly, where the claimant is the paying bank, the Panel first looks to the presentation of documents to the issuing bank as constituting performance by the claimant for purposes of the "arising prior to" clause. 16/ The Panel then looks at the date of the exporter's shipment of the goods. This second inquiry eliminates the possibility that compensation will be paid for Iraq's old debt and conforms to the purpose underlying a letter of credit, which is to provide payment for the goods to the seller. Therefore, for a paying bank's claim to be within the Commission's jurisdiction, the claimant bank must have presented the documents to the issuing bank after 2 May 1990, and the period between the shipment and the presentation of documents must not have exceeded 21 days.

F. Refinancing arrangements

31. Several claims involve agreements concluded between 1986 and May 1990 in which the claimant banks and Iraqi borrowers agreed to refinance various amounts originally due between 1986 and 1988. The unpaid amounts arose

from promissory notes issued by an Iraqi party, from letters of credit issued by an Iraqi bank and paid to the beneficiary by the claimant bank, or from overdrafts provided by the claimant bank to an Iraqi bank. Under the terms of the refinancing arrangements, some payments were not due until after 2 August 1990.

32. The Panel determines that these "refinancing" transactions are merely the repackaging and rescheduling of old and overdue debts. As such, the reasoning that applies to rescheduled loans (as set forth in paragraphs 24 and 25) likewise applies here. The Panel therefore finds that claims based on the refinancing of such old and overdue debts are not within the Commission's jurisdiction.

IV. REVIEW OF THE CLAIMS PRESENTED

33. The Panel now reviews the claims before it. After first describing the circumstances giving rise to the claims, the Panel considers whether the losses alleged are compensable in principle. The claims raise legal issues addressed in previous reports of this and other panels of the Commission, as well as those new issues discussed in the preceding section. In dealing with the former, the Panel will elaborate on these earlier findings to the extent required in the present instalment. Since the claims under review raise a wide variety of losses that the claimants have presented in different ways, the Panel has re-categorized certain of the losses to ensure consistency in its analysis and transparency in its presentation.

34. Except where otherwise noted, in this section the Panel only addresses the issue of compensability of the various claims as a matter of principle. The Panel's valuation of the compensable claims is reflected in annex II.

A. Contracts involving Iraqi parties

35. In this section, the Panel addresses claims by banks and financial institutions which provided financing to Iraqi borrowers, public or private, in the form of lines of credit, loans, letters of credit, promissory notes and refinancing arrangements. 17/ These claims are consequently divided according to the nature of the transactions.

1. Loans

(a) Rescheduled loans

(i) Claims description

36. Four claimants were members of a syndicate, a group of lender banks, which made two separate, general purpose loans to Rafidain Bank of Iraq in 1983 and 1985. The Central Bank of Iraq guaranteed both syndicated loans.

37. The first syndicated loan of USD 500 million was made to Rafidain Bank on 28 March 1983 by a group of lenders that included all four claimants. The original loan agreement called for Rafidain Bank to repay the loan in seven monthly instalments between 29 March 1985 and 29 March 1988.

38. A first rescheduling of the loan occurred in 1987; a second one took place on 1 March 1990, after Rafidain Bank failed to pay instalments due in March and September 1989. The second rescheduling agreement called for Rafidain Bank to repay the loan in a series of instalments between 28 February 1990 and 29 December 1993. The claimant alleges that Rafidain Bank paid the instalments due in February 1990 and June 1990, but that it failed to pay the instalment due in December 1990 or any instalments thereafter.

39. Two of the same four banks participated in a syndicate which made a second loan of USD 500 million to Rafidain Bank on 25 October 1985. The loan agreement provided that Rafidain Bank would repay the loan in seven equal instalments from 25 October 1987 to 25 October 1990. The parties rescheduled the loan on 1 November 1987 after the first instalment had fallen due and was not paid. Rafidain Bank paid the first four instalments that fell due in 1989, but failed to pay the instalment due in October 1990 and the remaining instalments.

(ii) Compensability

40. The claims described above are based on loans and associated guarantees that were renegotiated and rescheduled prior to 2 August 1990. For reasons explained in paragraphs 24 and 25 above, such rescheduled debt is considered to be old for purposes of the "arising prior to" clause. The Panel finds that the obligations of the Iraqi borrowers with respect to these loans arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990, and are therefore outside the Commission's jurisdiction.

41. For the reasons explained in paragraph 27, the associated guarantees are to be considered on the same basis as the original loans. Consequently, they also are outside the Commission's jurisdiction.

(b) Specific purpose loans for construction projects

(i) Claims description

42. Two claimant banks based in Germany provided financing to Iraqi enterprises (hereafter "employers") for the payment of contractors in conjunction with various construction projects in Iraq. The original loans were concluded between 1983 and 1985, and were guaranteed by the Central Bank of Iraq. The claimants also made several additional loans to the employers between 1984 and 1989 pursuant to supplemental agreements. Under the agreements, the loan proceeds were to be credited to the accounts of the contractors following the presentation of certain documents to the claimant banks, including performance certificates evidencing the contractors' progress in completing the projects. Based on the evidence submitted by the claimants, it appears that performance certificates were presented for work performed through 1989.

43. The employers failed to pay instalments due on the agreements between 1985 and 1987. As a result of negotiations between the employers, the claimants and their respective governments, "prolongation" agreements were concluded between 1987 and 1989. These agreements deferred the amounts due under the loan agreements and provided for repayment of the outstanding balance in a series of instalments payable between October 1987 and September 1991. The employers generally failed to make any further payments after 1989, although one claimant received payments in 1990 pursuant to an oil barter arrangement.

44. Another claimant bank, based in Egypt, was part of a syndicate of banks which provided financing for confirmation by a European bank of a letter of credit issued by Rafidain Bank in 1983 in connection with a construction project. Although the European bank made the required payments to the beneficiary, Rafidain Bank failed to reimburse the syndicate on the agreed dates in 1986. In 1986 the parties rescheduled Rafidain Bank's repayments to fall due in instalments between 1989 and 1992. Rafidain Bank failed to make any payments after May 1989.

(ii) Compensability

45. With respect to the claims under review, the Panel finds that the loans and associated guarantees are intimately related to transactions that were performed prior to 2 May 1990. As regards the claims described in paragraphs 42 and 43, this interrelationship is evidenced by the required presentation of performance certificates as a condition for disbursements under the loan and by the stipulation that such disbursements be credited directly to the account of the contractor. As regards the claim described in paragraph 44, the loan was intimately related to a letter of credit issued specifically for the construction project. In all these instances, the contractor completed performance of the underlying contract prior to 2 May 1990. For the reasons set forth in paragraph 22, the Panel finds that the claims based on these transactions are outside the Commission's jurisdiction under the "arising prior to" clause. 18/ The associated guarantees are considered on the same basis as the loans guaranteed, and consequently the claims based on these guarantees also are outside the Commission's jurisdiction.

(c) Specific purpose loans for the purchase of goods

(i) Claims description

46. Three claimants provided financing for goods purchased by Iraqi buyers.

47. One claimant, a German bank, made a loan to an Iraqi buyer in February 1988 to finance the latter's purchase of goods from a German exporter which were shipped in March 1988. Disbursements under the loan were to be made to the exporter's account upon presentation of a certificate of shipment by the exporter. The loan agreement called for the Iraqi buyer to repay the loan in instalments from September 1988 to March 1991. The claimant states that it paid the exporter, but that the Iraqi buyer failed to make the instalment payments due under the loan after September 1988.

48. Another claimant bank, based in Egypt, participated in a syndicate which provided funds to a bank that confirmed a letter of credit issued by the Central Bank of Iraq. The letter of credit, which financed the purchase of goods by an Iraqi state enterprise, called for the Central Bank of Iraq to reimburse the confirming bank 540 days after the date of the

exporter's shipment of the goods. The exporter shipped the goods in 1985. The Central Bank of Iraq allegedly failed to reimburse the confirming bank when the principal amount fell due in 1987. Under the separate 1985 agreement between the confirming bank and the syndicate, the confirming bank was to forward to the syndicate any reimbursement payments that it received from the Central Bank of Iraq. The claimant now seeks compensation for its share of the amount unpaid by the Central Bank of Iraq.

49. The same Egyptian bank also provided a guarantee in 1986 to a confirming bank with reference to the latter's obligation to pay drafts drawn by an exporter on several letters of credit issued by Rafidain Bank. When Rafidain Bank failed to pay the exporter's drafts as they matured in 1986, the claimant reimbursed the confirming bank, pursuant to the guarantee agreement. Although no specific repayment schedule was established, Rafidain Bank made partial payments to reimburse the claimant between 1986 and 3 May 1990. The claimant alleges, however, that Rafidain Bank failed to reimburse it fully, and now seeks the balance due.

50. The third claimant, a United States supplier, is the successor in interest of an export credit insurer which had reimbursed a paying bank in Bahrain for its payments to exporters (including the claimant) in respect of goods shipped to Iraq between 1988 and March 1990. The Bahraini bank made the payments pursuant to a line of credit established in 1987 and 1989 in favour of Rafidain Bank, which had issued the letters of credit in favour of the exporters. Rafidain Bank was to repay the Bahraini bank in instalments due one to three years after the dates of shipment, which took place between June 1988 and March 1990. Rafidain Bank allegedly failed to pay instalments that fell due in September 1990 and thereafter.

(ii) Compensability

51. As evidenced by the provisions of the relevant loan agreements, each of the described loans was a payment mechanism to finance the purchase of goods by an Iraqi party. In the case of the German bank, the interrelationship between the loan and the underlying sales transaction is further evidenced by the fact that disbursements were to be made directly to the account of the exporter. In the case of the Egyptian bank, there are various references in the syndicate agreement to the specific sales transaction; for example, the date of repayment by the Central Bank of Iraq was tied to the date of shipment of the goods. Similarly, the guarantee by the Egyptian bank to a confirming bank relates to letters of credit issued for the shipment of goods. In the case of the North American trading company, the line of credit agreement identifies a particular supplier as the beneficiary of each letter of credit.

52. Accordingly, for the reasons stated in paragraph 22, in order to determine whether these claims are within the Commission's jurisdiction under the "arising prior to" clause, the Panel looks to the date of performance of the underlying transaction that was the subject of the loan,

that is, the date of shipment of the goods. In each case, the goods were shipped well before 2 May 1990. The Panel therefore finds that the claims are based on debts or obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and are therefore outside the Commission's jurisdiction.

(d) Specific purpose loans for financing the purchase of shares

53. One claimant is a bank based in Egypt of which Rafidain Bank is a shareholder. In 1985 and 1986, the claimant increased its capital stock, and its shareholders participated in the increase to the extent of their proportional share. To fund Rafidain Bank's participation in the capital increase, in 1986 the claimant granted to Rafidain Bank two interbank deposits of USD 10 million each. The funds were to be repaid by Rafidain Bank within five years in equal semi-annual instalments commencing in 1988. Rafidain Bank paid the instalments due in 1988 and 1989, but failed to pay the full instalment in June 1990 and all instalments thereafter.

54. The Panel finds that the specific purpose of the loan made by the claimant was to finance a transaction completed in 1985 and 1986, namely Rafidain Bank's purchase of the newly issued shares. For the reasons described in paragraph 22 above, since the underlying transaction was completed prior to 2 May 1990, the Panel finds that the obligations of the Iraqi borrower arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and therefore the claim is outside the Commission's jurisdiction.

2. Letters of credit

(a) Claims description

55. Eleven claimants are banks which paid exporters, mainly between 1988 and July 1990, pursuant to a number of letters of credit issued by the Central Bank of Iraq and two Iraqi banks, Rafidain Bank and Rasheed Bank. The credits were issued to finance the purchase of goods by Iraqi importers. The goods were shipped between 1988 and July 1990 under payment terms ranging from payment upon delivery to payment two years from the date of the shipment.

56. The claimant banks each allege that they paid the exporters upon the exporters' shipment of the goods and presentation of the required documents. Although the Iraqi issuing banks were obliged to reimburse the claimant banks upon the latter's payment to the exporters, the claimants allege that the Iraqi banks failed to do so.

(b) Compensability

57. For the reasons stated in paragraphs 29 to 30, in order to determine whether the claims by the paying banks are within the Commission's jurisdiction under the "arising prior to" clause, the Panel looks to the date that the claimant presented the documents to the issuing bank, 19/ as

well as to the date of performance of the underlying transaction, that is, the date of shipment of the goods.

58. In some instances, the record does not provide sufficient evidence of the relevant facts regarding the particular transactions under review and therefore no recommendation regarding compensation can be made. Where sufficient evidence is present, the Panel finds that the remaining transactions in six of the eleven claims concern payments made in respect of shipments by the exporter that took place more than 21 days before 2 May 1990. 20/ Consequently, these claims are outside the Commission's jurisdiction.

59. The other five claims include payments relating to shipments made within 21 days prior to 2 May 1990. In a procedural order dated 14 January 2000, the Panel instructed the secretariat to transmit to the Government of the Republic of Iraq the claim files relating to these five claims, together with a number of specific factual questions. Iraq was invited to submit its comments and responses by 17 July 2000. The Panel has transferred these claims to a future instalment for a final determination of their compensability.

3. Refinancing arrangements

(a) Claims description

60. Five claimants variously allege that they paid letters of credit issued by Rafidain Bank, provided overdrafts to Rafidain Bank, or purchased promissory notes issued by Iraqi entities and guaranteed by Rafidain Bank. Repayments on these transactions from Rafidain Bank were originally due between 1986 and 1988.

61. Between 1986 and 15 May 1990, each of the claimants and Rafidain Bank entered into a refinancing agreement after Rafidain Bank failed to pay the amounts when due. Under the refinancing agreements, the outstanding amounts on the letters of credit, overdrafts, or promissory notes were to be repaid by Rafidain Bank in instalments falling due between 1987 and 1993. A guarantee from the Central Bank of Iraq supported most of the refinancing agreements. Rafidain Bank stopped making payments under four of the five refinancing agreements by 1989. With respect to the fifth one, signed in May 1990, Rafidain Bank did not pay the instalments due after July 1990.

(b) Compensability

62. For the reasons stated in paragraph 32, the Panel finds that the loans in the preceding paragraph represent the repackaging and rescheduling of overdue debts that originated before Iraq's invasion of Kuwait. As such, the claims are based on debts and obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990 and are therefore outside the Commission's jurisdiction. For the reasons explained in paragraph 27, the Panel finds that claims based on

the associated guarantees are considered on the same basis and consequently also are outside the Commission's jurisdiction.

4. Promissory notes

63. Two claimants are banks which purchased promissory notes issued by Iraqi companies between 1983 and January 1988. The notes originally had been issued in favour of non-Iraqi suppliers of goods or services in conjunction with construction projects in Iraq; and they were guaranteed by the Central Bank of Iraq. Both claimant banks purchased the promissory notes before their maturity dates. The Iraqi issuers allegedly did not pay the promissory notes when they fell due, between 1988 and April 1990.

64. The Panel finds that these promissory notes were issued for payment of work performed before 2 May 1990. The Panel notes that the "E1" Panel and the "E3" Panel both have concluded that where promissory notes were issued for payment of work that was performed prior to 2 May 1990, claims based on the notes constitute debts or obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990, and are outside the Commission's jurisdiction. 21/ This Panel concurs in this view and, accordingly, it concludes that these claims are outside the Commission's jurisdiction. For the reasons explained in paragraph 27, the Panel finds that claims based on the associated guarantees are to be considered on the same basis and consequently also are outside the Commission's jurisdiction.

5. Uncollected debts

65. One claimant which issues credit cards seeks compensation for the unpaid charges of Iraqi parties that were not settled after Iraq's invasion of Kuwait.

66. The Panel's review of the claim file reveals that the goods and services underlying the unpaid credit card charges of Iraqi parties were provided within 90 days prior to Iraq's invasion and occupation of Kuwait, and therefore are not barred from the Commission's jurisdiction by the "arising prior to" clause. Moreover, the Panel finds that these debts all fell due before the end of the compensable period for Iraq, i.e. before 2 August 1991, and therefore the claim is compensable in principle. 22/

B. Contracts involving Kuwaiti parties

1. Loans

67. Four claimants provided loans, respectively, to Kuwaiti individuals, Kuwaiti companies, and individuals of Indian nationality doing business in Kuwait. The claimants assert that, as a result of Iraq's invasion and occupation of Kuwait, they did not receive payments due under the loans. The claims involve different circumstances of non-payment, which are described separately hereafter.

(a) Alleged discharge during period of occupation

(i) Claims description

68. One claimant bank made three separate loans (hereinafter referred to as "Loan 1," "Loan 2," and "Loan 3") between 1988 and June 1990 to two borrowers of Indian nationality who were doing business in Kuwait. The monies under all three loans had been disbursed; two loans were to be repaid in Kuwaiti dinars, and the other in United States dollars, at various repayment dates ranging from January 1989 to April 1992. As collateral for the three loans, the claimant obtained security interests in bank deposits of the two borrowers in India.

69. While the claimant's branch office in Kuwait was under the control of Iraqi forces in November and December 1990, and after Iraqi authorities had withdrawn Kuwaiti currency from circulation and placed any debts denominated in that currency on a par with the Iraqi dinar, 23/ the two borrowers repaid Loan 1 and Loan 3 (both past due instalments and all future instalments) in Iraqi dinars to the claimant's branch office. In addition, the borrowers secured from the Iraqi authorities, then in control of the claimant's Kuwait branch office, certificates releasing the borrowers from further liability on those two loans. Loan 2 was not repaid in Iraqi dinars or any other currency.

70. Following the liberation of Kuwait, the claimant filed separate actions in Kuwait against the two borrowers to recover the principal and interest due on the three loans, challenging the payments made by the borrowers in Iraqi dinars. As regards Loan 1, a judgement in the claimant's favour was entered by a Kuwaiti court and was upheld on appeal, but the claimant has been unable to execute on this judgement. 24/ An injunction from an Indian court obtained by both borrowers prevents the claimant bank from enforcing its security interest over the borrowers' deposits that served as collateral for each of the three loans. In 1997, the claimant entered into a settlement agreement with respect to Loan 3, but seeks the difference between the settlement and the unpaid amount.

(ii) Compensability

71. In respect of Loan 1 and Loan 3, the Panel finds that the claimant's losses were directly caused by the actions of Iraqi officials in connection with Iraq's invasion and occupation, within the meaning of Governing Council decision 7. 25/ Such actions included the takeover of the claimant's branch in Kuwait, the forced devaluation of debts denominated in Kuwaiti dinars, and, specifically, the issuance of the certificates of release of the borrowers' liability on the loans. 26/ Accordingly, the claimant's losses arising from Loan 1 and Loan 3 are compensable in principle. The Panel further finds that under the circumstances of this claim, the claimant's settlement agreement regarding Loan 3 is in principle an act in mitigation of its loss, and does not preclude a claim for the remaining balance. 27/

72. With respect to Loan 2, the facts indicate that the claimant's alleged losses were not directly caused by the actions of Iraqi officials in connection with Iraq's invasion and occupation. Unlike Loan 1 and Loan 3, no certificate of release was issued by Iraqi officials for Loan 2, nor was payment made while the claimant's branch was under the control of the Iraqi forces. Thus the claimant's loss was directly caused by the borrower's failure to repay the loan and the claimant's inability to enforce its security interest due to the injunction issued by the court in India. Accordingly, this claim is not compensable before this Commission.

(b) Alleged inability to repay

(i) Claims description

73. One claimant bank made several loans between 1987 and April 1990 to a Kuwaiti trading company. Another claimant made one loan to the same borrower in September 1989. Both claimants allege that the Kuwaiti borrower did not make payments after 2 August 1990 because its premises and other assets were damaged or destroyed during Iraq's invasion and occupation of Kuwait.

74. A third claimant is a construction company which had made available a credit in 1987 to a related company operating in Kuwait. Disbursements were made in 1990 to finance the purchase of machinery by the Kuwaiti party from a third party. The claimant alleges that all of the borrowers' equipment, machinery and plant were destroyed, and that the borrower ceased to exist as a consequence of Iraq's invasion and occupation of Kuwait.

(ii) Compensability

75. The Panel recalls the determination in its first report that paragraph 10 of Governing Council decision 9, regarding losses suffered in connection with contracts to which Iraq was not a party, requires claimants seeking compensation for the non-payment of amounts owed by Kuwaiti parties to "provide specific proof that the failure to perform was the direct result of Iraq's invasion and occupation of Kuwait." 28/ Other panels of the Commission have concurred in this determination. 29/ The Panel has further noted that the failure of the Kuwaiti party to pay amounts owed "should not, for example, stem from a debtor's economic decision to use its available resources to ends other than discharging its contractual obligation, for such an independent decision would be the direct cause of the non-payment" rather than Iraq's invasion and occupation of Kuwait. 30/ The Panel reiterates that it is not sufficient for a claimant merely to allege that the Kuwaiti party was adversely affected by Iraq's invasion and occupation. The claimant must provide specific evidence to demonstrate that the Kuwaiti party's inability to pay the debt was a direct result of Iraq's invasion and occupation of Kuwait.

76. With reference to the present claims, the Panel finds the following. The first two claimants have not provided the requisite evidence and

therefore the losses alleged are not compensable. The third claimant has provided sufficient evidence indicating that the Kuwaiti debtor ceased to exist as a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the Panel concludes that this claim is compensable in principle.

2. Letters of credit

77. Three claimants are banks which paid letters of credit issued by Kuwaiti banks between February and June 1990 to finance the purchase of goods by Kuwaiti buyers. According to the claimants, the exporters shipped the goods in June and July 1990, respectively, but delivery to the Kuwaiti buyer was prevented by Iraq's invasion and occupation of Kuwait. The claimants allege various reasons for their failure to receive full or partial reimbursement from the Kuwaiti issuing bank, as described hereafter.

(a) Impossibility to deliver the goods

78. Two of the claimants allege that, following the dispatch of the goods and payment to the exporter, payment requests could not be sent to or acted upon by the Kuwaiti issuing bank and that goods could not be delivered to the Kuwaiti buyer due to Iraq's occupation of Kuwait. To avoid further losses, both claimant banks took possession of the goods and resold them to the exporters at a lower price. The claimants sought reimbursement from the Kuwaiti issuing bank for the difference between the amount paid on the letter of credit and that recouped through the re-sale of the goods, but the Kuwaiti banks did not grant their request.

79. The Panel finds that the claimants' inability to receive payments from the Kuwaiti issuing bank was directly caused by the invasion and occupation of Kuwait. 31/ The Panel further finds that the claimants acted reasonably and in good faith to mitigate their losses by reselling the goods. The Panel therefore concludes that the claims are compensable in principle.

(b) Non-complying documents

80. One claimant bank states that the Kuwaiti issuing bank of a letter of credit refused to authorise payment to the exporter on the basis that the documents presented by the exporter in July 1990 did not conform to the requirements of the letter of credit. The claimant bank subsequently secured payment in March 1991 from the Kuwaiti bank's New York branch and paid the exporter, but the funds transfer was later reversed as not actually authorised by the Kuwaiti bank. At that point, the claimant tried to exercise its security interest over the goods, but discovered that the goods had been lost during Iraq's invasion and occupation while they were stored at the Port of Kuwait.

81. Given the justified refusal of payment from the Kuwaiti issuing bank based upon the non-conformity of the documents and the fact that the goods

had already been lost at the time of payment, the Panel finds that the claimant's payment to the exporter was at its own risk. The Panel therefore finds that the claimant's loss is not a direct result of Iraq's invasion and occupation of Kuwait.

3. Uncollected debts

(a) Claims description

82. Six claimants are either banks, private lenders, or issuers of credit cards or traveller's cheques which seek compensation for unpaid amounts due from Kuwaiti parties under various types of transactions. These transactions include standby letters of credit, financing agreements for the purchase of goods by Kuwaiti buyers, fees for services and machinery, credit card charges and the outstanding balance on the account of a selling agent of traveller's cheques.

(b) Compensability

83. The Panel finds that these six claims are to be evaluated under the standard of paragraph 10 of Governing Council decision 9, regarding losses suffered in relation to contracts to which Iraq was not a party, as described above in paragraph 75.

84. With reference to the present claims, the Panel finds that three of the claimants have provided sufficient evidence with respect to all their debtors to demonstrate that the non-payment of the debts in question was a direct result of Iraq's invasion and occupation of Kuwait. A fourth claimant has made such a showing with respect to one of its debtors. These claims therefore are compensable in principle. Specifically, three of the claimants have shown to the satisfaction of the Panel that the Kuwaiti debtor did not resume operations as a direct result of Iraq's invasion and occupation. A fourth claimant has provided specific proof that Iraq's invasion and occupation directly caused the debtor's failure to perform.

85. The remaining claimants have failed to prove that the Kuwaiti party's failure to perform was directly caused by Iraq's invasion and occupation of Kuwait, such as evidence that the Kuwaiti borrower, for example, was rendered bankrupt, insolvent, or ceased to exist as a result of the invasion and occupation of Kuwait.

C. Other contract-related losses

1. Traveller's cheques

(a) Traveller's cheques lost or stolen in Kuwait

(i) Claims description

86. Three claimants are issuers of traveller's cheques which regularly sent cheques to their selling agents or correspondent banks in Kuwait. The claimants allege that cheques were lost or stolen while in the possession

of the selling agents in Kuwait during the period of Iraq's occupation of Kuwait. The claimants state that the cheques are cash equivalents and that they are under an obligation to pay cheques that are accepted by third parties and presented for payment. These claimants seek compensation for various types of losses, which are described below.

87. For the most part, the claimants seek compensation for payments that they have already made on the lost or stolen traveller's cheques. 32/ The claimants also seek compensation for amounts that they may have to pay at some time in the future. The claimants allege that they may have to make payments on cheques that are still missing, if they are presented for payment in the future. One claimant rejected some requests for payments made by encashing banks or agents because it identified the cheques as lost or stolen, but claims on the basis that the cheques may be presented again for payment.

88. These claimants also seek compensation for related losses, including increased costs and lost profits arising from the loss of the cheques. Claims for increased costs include, for example, the cost of reprinting new cheques to replace the stolen ones, staff and auditing costs to identify the lost cheques, and settlement cheques returned by other banks because of frozen Kuwaiti accounts and associated collection fees.

89. Finally, one of the claimants seeks compensation both for the actual loss of profit that it would have earned on the stolen traveller's cheques and the anticipated profit on the funds used as payment to cover the stolen traveller's cheques.

(ii) Compensability

90. The Panel finds that the claimants' payments of traveller's cheques that were lost or stolen in Kuwait constitute a loss directly caused by Iraq's invasion and occupation of Kuwait. Such claims are compensable in principle.

91. With respect to lost traveller's cheques that are still outstanding, the Panel finds that a loss, albeit a future one, is compensable if it is certain. The claimants have not provided sufficient evidence to establish that they will sustain an actual loss at some point. The Panel therefore finds that these portions of the claims are not compensable.

92. As regards lost or stolen traveller's cheques that were presented to the claimant's agents but that the claimant refused to pay, the Panel finds that the claimant has not suffered an actual loss. Moreover, the claimant has not established that it would have to honour the cheques if they were presented again for payment. Therefore, this portion of the claim is not compensable.

93. As regards the claims for increased costs, including mitigation expenses incurred by the claimants in respect of the lost or stolen traveller's cheques, the Panel finds that they are losses directly arising

from Iraq's invasion and occupation of Kuwait and are compensable in principle.

94. Finally, with respect to the claim for the loss of profits that the claimant would have earned on the stolen traveller's cheques, the Panel finds that these losses are compensable in principle. 33/

(b) Traveller's cheques lost in transit

95. One claimant bank based in Egypt, as part of its normal course of business, paid its merchant customers in 1985 for traveller's cheques issued by Rafidain Bank. To obtain reimbursement from Rafidain Bank, the claimant sent the cheques in 1985 for collection from Rafidain Bank. The cheques were lost while in transit and the claimant, alleging that it was not reimbursed by Rafidain Bank, now seeks compensation for the sums paid to its customers.

96. The Panel notes that the claimant's alleged damages occurred in 1985, when the cheques were lost while being sent for collection from Rafidain Bank. The Panel therefore concludes that the claimant's alleged loss is based on obligations of Rafidain Bank that were outstanding well in advance of Iraq's invasion of Kuwait, and accordingly the claim is not compensable under the "arising prior to" clause. 34/

2. Guarantee in favour of an Iraqi party

(a) Claim description

97. One claimant is a Belgian transport company which entered into an agency contract in December 1984 with an Iraqi state company under which the Iraqi company acted as the claimant's forwarding agent for cargo arriving in Iraq. The agency contract required the claimant to provide an unconditional guarantee in favour of the Iraqi company to cover the claimant's financial obligations. The claimant's bank provided the guarantee.

98. The agency agreement was extended annually until 2 August 1990. The claimant alleges that, although it is not aware of any outstanding amounts under the agency contract, the Iraqi state company and its bank, Rafidain Bank, refuse to release the guarantee. The claimant seeks compensation for the amount of the guarantee and the yearly commissions charged by its own bank for provision of the guarantee from 1990 to 1993.

(b) Compensability

99. As regards the amount of the guarantee itself, the claimant has not shown that it made any payments or suffered any loss. Accordingly, the Panel finds that the claim is not compensable.

100. Regarding the claim for commissions paid on the guarantees, the Panel finds that the portion of the 1990 commission corresponding to the period of Iraq's invasion and occupation is compensable because the claimants paid

that portion in advance and could not recover it despite the suspension of the underlying agency agreement. However, the Panel finds that the claimant's further extension of the guarantee and the accompanying payment of commissions in subsequent years was the result of its independent business decisions and consequently is not compensable.

3. Bank accounts

101. Some claimants deposited funds in bank accounts in Iraq and Kuwait in connection with their operations as, respectively, banks, airlines, and various financial institutions. The claimants allege that they have not been able to regain control of these funds from the date of Iraq's invasion of Kuwait until the present time.

(a) Bank accounts in Iraq

102. An Egyptian bank alleges that its account with Rafidain Bank was used in connection with transfers of funds of Egyptian workers in Iraq. Another Egyptian claimant, engaged in air transportation services, states that the sums in its accounts with Rafidain Bank and Rasheed Bank represented the sale proceeds of its airline tickets in Iraq. A claimant from the United States, which provides credit card services, alleges that its Iraqi dinar account was used to pay Iraqi service establishments for charges made by its credit card members.

103. The Panel recalls the determination in its first report that claims for funds held in Iraqi banks are compensable if the claimant had a reasonable expectation that it could transfer the funds outside Iraq, while such claims are not compensable if the funds were not exchangeable for foreign currency. 35/ In the claims under review, the Panel finds that the two Egyptian claimants have shown through previous practice that they had a reasonable expectation that they would eventually be able to transfer the funds outside Iraq, and the claims are therefore compensable. 36/ With respect to the third claim, the Panel finds that the claimant has failed to provide evidence of the nature of the account or of any right to transfer the funds outside Iraq; and, as a result, this claim is not compensable.

(b) Bank accounts in Kuwait

104. One claimant alleges that it was required to deposit funds in a non-interest-bearing United States dollar account with a Kuwaiti bank as security for guarantees given by its Kuwait office to various Kuwaiti government entities. The claimant closed its Kuwait office in December 1990. The claimant alleges, however, that it was unable to file an application to cancel its business license and the related guarantees until 1992, due to the lingering turmoil in Kuwait; and that although Kuwaiti law provides for a two-year process for the cancellation of licenses and return of deposits, its funds were not released until August 1995, that is, nearly three years after its application. The claimant seeks compensation for "the opportunity cost of holding the funds in a non-interest-bearing

account" from 1990 to 1995, and for the commission charges deducted by the Kuwaiti bank.

105. As regards the first part of the claim, the Panel finds that in view of the two-year waiting period normally imposed by Kuwaiti law for the return of funds and the claimant's delay in filing its application until 1992, the period during which the claimant was deprived of the use of its funds as a direct result of Iraq's invasion and occupation of Kuwait was eight months. 37/ The Panel finds all other delays in the return of the claimant's funds were substantially due to causes other than Iraq's invasion and occupation of Kuwait. 38/

106. With respect to the claim for commission charges, the Panel further finds that the claimant has failed to present sufficient evidence of the direct relationship between the charges incurred and Iraq's invasion and occupation of Kuwait.

D. Non-contractual losses

107. Several banks and financial institutions allege that they suffered various types of losses due to the impact of Iraq's invasion and occupation on the Middle East generally, and on their own business operations in particular.

1. Decline in business and course of dealing

(a) Claims description

108. A number of claimants, based or having had an office or branch in Kuwait, Iraq, Bahrain, or Tunisia on 2 August 1990, allege that their business operations in these locations suffered a decline in revenue during the period of Iraq's invasion and occupation of Kuwait and in some instances after that period. These claims are described below on the basis of the geographical area where the claimants suffered the alleged loss.

109. Five claimants provided investment, credit card, and insurance services to the Kuwaiti market through branches or offices in Kuwait. The claimants allege that after Iraq invaded Kuwait they were forced to suspend operations and that their businesses in Kuwait ceased or were substantially interrupted throughout the period of Iraq's occupation. These claimants generally seek compensation for lost profits for that period and, in some cases, for up to one year after the date of the liberation of Kuwait. One of these claimants alleges that it closed its office permanently in December 1990. Another one alleges losses from the decline in revenue of its credit card business in both Kuwait and Iraq. Yet another claimant, a bank based in India, seeks compensation for the fees that it would have earned on a management contract to provide personnel and other services to a company based in Kuwait.

110. A bank based in Bahrain alleges that it was required to downsize its operations as a result of the liquidity crisis in the Middle East and the

general perception of economic uncertainty in the region. The claimant maintains that these circumstances affected its ability to obtain funding at pre-invasion levels, thereby reducing the revenue that it normally would have earned between August 1990 and December 1991.

111. Two claimants are banks located in Tunisia which provided loans and other financial services to Tunisian companies and individuals at the time of Iraq's invasion of Kuwait. One of them primarily provided financing for projects in the Tunisian tourism sector. This claimant alleges that a decline in income due to the reduction in tourism caused by Tunisia's proximity to Kuwait prevented the borrowers from repaying the loans. The other claimant is a Tunisian-Kuwaiti joint venture whose board of directors included Kuwaiti nationals. The claimant alleges that Iraq's invasion and occupation of Kuwait prevented the Kuwaiti directors from attending any of the board meetings in 1991 and one meeting in 1992, and that the absence of a quorum prevented the board from approving funding for projects that thereby were frustrated.

(b) Compensability

112. In its second report, the Panel defined the area within which a claim for decline in business is eligible for compensation (the "compensable area"). The compensable area includes geographic locations that were the subject of military operations or the threat of military action within the meaning of paragraph 21 of decision 7. In its third report, the Panel further defined the geographic and temporal scope of the compensable area. 39/ These findings were summarized in a table that is reproduced in relevant part below:

Location	Period
Iraq	2 August 1990 - 2 March 1991
Kuwait	2 August 1990 - 2 March 1991
Saudi Arabia (within the range of Iraq's scud missiles)	2 August 1990 - 2 March 1991
Bahrain	22 February - 2 March 1991

113. The Panel also must determine whether to award compensation for losses that continued to be felt after 2 March 1991 (a "secondary compensation period" or "recovery period"). This issue has already been considered by this and other panels for claims similar to those under review. 40/ With regard to banks and financial institutions in Kuwait, the "E4" Panel has determined the appropriate recovery period to resume normal operations in Kuwait after the end of Iraq's occupation to be five months. The Panel adopts the "E4" Panel's findings, and recognizes a similar recovery period. 41/

114. In its third report, the Panel also distinguished between those claimants which maintained a presence in a compensable area by way of a branch, agency or other establishment, and those which did not. The Panel

determined that, where a claimant based outside the compensable area maintained a presence within that area, claims for decline in business are compensable "for profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait". 42/

115. Where the claimant did not maintain a presence in the compensable area, the Panel concluded that the claim is to be evaluated under the evidentiary standards of paragraph 11 of Governing Council decision 9. 43/ As the Panel has previously noted, a claim for decline in business is compensable under paragraph 11 where the claimant shows that:

> "there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings." 44/

116. With respect to claims for decline in business in Kuwait and Iraq, the Panel finds that such claims are compensable in principle subject to the claimant's presenting sufficient proof to substantiate its loss. The Panel finds that the claimant seeking to recover losses suffered from the decline in its credit card activities in Kuwait and one of the claimants providing financial information services have provided sufficient evidence to substantiate their losses. The Panel finds that the remaining claimants referred to in paragraph 109 have failed to provide sufficient evidence to substantiate their alleged declines in business.

117. With respect to claims for decline in business in Bahrain, the Panel found in its third report that Bahrain was affected by military operations from 22 February 1991 until 2 March 1991. Consequently, the Panel awarded compensation for losses caused by the cancellation of shipping operations in the area from 22 February to 2 March 1991. 45/ In the present instance, however, the claimants' alleged difficulty in obtaining funding arose early in the period of Iraq's invasion and occupation of Kuwait. Hence, the alleged damage was not a direct result of Iraq's invasion and occupation, but rather a result of the general uncertainty in the region. Moreover, there is no evidence that the claimant's alleged damages materially increased during the ten days of military operations affecting Bahrain. Accordingly, the claim is not compensable.

118. Regarding claims for decline in business by banks in Tunisia, the alleged losses were not incurred within a compensable area as defined in paragraph 112 above. 46/ The Panel further finds that the claimants have failed to make the necessary special showing, stated above in paragraph 115, regarding a regular course of dealing and expectation of future business; therefore, such claims are not compensable.

2. Sale of assets at a loss

(c) Claims description

119. A claimant based in Bahrain and engaged in the offshore banking industry alleges that as a result of Iraq's invasion and occupation of Kuwait, it suffered a liquidity crisis when its depositors withdrew their funds and it was not able to secure alternative funding from Middle Eastern and international sources. The majority of the withdrawals took place between August 1990 and December 1990. To bridge its shortage of liquid assets, the claimant alleges that it was forced to sell marketable securities and loan portfolios between August and December 1990 at a price lower than their book value.

120. Another claimant bank, located in Bahrain, purchased shares in two Kuwaiti companies for investment purposes mainly in June 1990, and states that its normal practice would have been to sell these shares after one year. The claimant alleges, instead, that it had to hold the shares until 1994 because Iraq's invasion and occupation of Kuwait caused the shares to decline in value. The claimant seeks compensation for the difference between the last available market price of the shares on 27 June 1990 before Iraq's invasion and occupation of Kuwait and the eventual sale price in 1994.

(d) Compensability

121. With respect to the claim described in paragraph 119, the Panel recalls the findings summarized in paragraph 112 above, that military operations were felt in Bahrain from 22 February 1991 until 2 March 1991. 47/ In the claim under review, the claimant's sale of its financial assets took place from August 1990 to December 1990, which is before the period when Bahrain was affected by military operations. Further, the Panel finds that the liquidity gap suffered by the claimant in the region was a result of its depositors' responses to the general economic situation in the region. Therefore, the claimant's losses are not direct losses within the meaning of Security Council resolution 687 (1991), and the claim is not compensable. 48/

122. With respect to the claim described in paragraph 120, the Panel notes that many factors may have affected the value of the two companies' stock. The Panel finds, in this case, that the claimant has failed to prove that its loss was the direct result of Iraq's invasion and occupation of Kuwait, rather than other market factors, and the claim is not compensable.

3. Decline in value of a claimant's security for a loan

123. One claimant is a bank based in Bahrain which participated in a syndicated loan made in 1982 to a Kuwaiti borrower; the loan was secured by a mortgage over the borrower's land and buildings in Kuwait. The borrower failed to pay the amounts due in 1984 and the claimant alleges that the value of the mortgaged property depreciated as a direct result of Iraq's

invasion and occupation of Kuwait. The claimant seeks compensation for the difference between the value of the properties in June 1990, before Iraq's invasion and occupation, and July 1998. 49/

124. The claimant has not actually sold or foreclosed the mortgaged property. Accordingly, the Panel determines that the claimant has failed to show that it has suffered an actual loss and the claim is therefore not compensable.

4. Increased costs

125. Several claimants are banks and financial institutions operating in Kuwait, Bahrain, and Saudi Arabia which allege that they incurred various additional costs relating to their employees as a result of Iraq's invasion and occupation of Kuwait. They also allege that additional costs were incurred in connection with their office premises.

(a) Salaries and termination payments

(i) Claims description

126. Various claims involve salaries paid to unproductive employees in Kuwait after the claimant had suspended or had limited its operations. One claimant seeks compensation for the salary of staff in Bahrain, and for those temporarily relocated to its London branch as part of the claimant's "overall disaster recovery plan" following Iraq's invasion and occupation of Kuwait.

127. Several claimants with offices in Kuwait seek compensation for termination indemnities paid to employees who were unable or unwilling to return to Kuwait after Iraq's invasion and occupation. Another claimant seeks compensation for termination payments made to employees in Bahrain, as well as in its offices in London, Singapore and New York, as part of cost-saving measures resulting from the reduced profitability of its Bahrain head office following Iraq's invasion and occupation of Kuwait.

(ii) Compensability

128. In its first report, the Panel determined that salary payments to unproductive staff are compensable to the extent that the lack of productivity was a direct result of Iraq's invasion and occupation of Kuwait. It also found that salary payments made to unproductive staff after their evacuation are compensable only where the employee could not be reassigned to other productive tasks. 50/ In its third report, the Panel found that where the claimant terminated employment rather than incur unproductive staff expenses, contractually or legally required early termination expenses are compensable in principle. 51/

129. As regards those claims based on unproductive salaries and termination payments in Kuwait, the Panel finds that such expenses were

incurred as a direct result of Iraq's invasion and occupation of Kuwait and claims based on these expenses are compensable in principle.

130. As regards those claims based on unproductive salaries and termination payments in Bahrain and associated offices located elsewhere, the Panel determines that the compensable period for Bahrain is too short to justify salary and termination payments to non-productive employees in these locations. The Panel therefore finds that such expenses were not incurred as a direct result of Iraq's invasion and occupation of Kuwait and consequently, claims based on these expenses are not compensable.

(b) Additional staff costs

(i) Claims description

131. Other claimants made additional payments to their employees during Iraq's invasion and occupation of Kuwait. Two claimants with head offices in the United States made additional payments to their Kuwait office employees as incentives to continue working in Kuwait during Iraq's occupation. Another claimant paid a "loyalty allowance" to its employees in several of its Saudi Arabian offices during Iraq's occupation of Kuwait. A fourth claimant paid benefits to its key expatriate employees in Bahrain during Iraq's occupation of Kuwait. Lastly, a claimant bank based in Bahrain paid the airfare and other travel expenses of its senior staff sent to London in November 1990 for the purpose of "discuss[ing] the position" of the claimant's Kuwait branch with officials of the Central Bank of Kuwait and other Kuwaiti banks that had relocated to London.

(ii) Compensability

132. The Panel recalls its findings in its third report that additional payments to staff are compensable "where related to the compensable area and periods" and to the extent that they are reasonable in amount. 52/

133. Therefore, with respect to the additional payments to employees in Kuwait and in locations in Saudi Arabia within Iraq's scud missile range, the Panel finds that these payments are compensable in principle, insofar as they are reasonable in amount. With respect to additional payments made to employees in Bahrain, the Panel finds that Bahrain was not affected by military action for a period long enough to render compensable the additional payments to employees in this area. Therefore, additional payments made to employees in Bahrain are not compensable.

134. With respect to the Bahraini bank's claim for travel expenses to London of its senior staff, the Panel finds that with respect to the particular circumstances of the claim, the claimant's need to discuss the situation of its Kuwaiti branch with Kuwaiti officials then located in London was an increased cost of operations directly resulting from the invasion and occupation of Kuwait. Inasmuch as the costs incurred are reasonable, the Panel determines that this claim is compensable in principle.

(c) Advance payments for rent and other services

135. Some claimants that maintained offices in Kuwait were forced to cease their operations in Kuwait during the period of Iraq's invasion and occupation. These claimants already had made advance payments covering the period between 2 August 1990 and 2 March 1991 for rent and other services, such as document storage, photocopying and utilities. They claim compensation for the loss of the benefit of these services.

136. In its third report, the Panel determined that advance rental payments in the case of businesses are best considered within a loss of profits claim. 53/ In some instances, however, as is the case with the present claims, the manner in which the claims are presented makes it infeasible to value a claim for advance rental payments as an element of a loss of profits claim. In such instances, it is the view of the Panel that the advance payment of rent created an entitlement to the use of an asset, and the claims for advance rental payments are compensable if the claimant's "inability to receive the benefit of the amounts paid in rent during the relevant period was the direct result of Iraq's invasion and occupation". 54/ The Panel finds that in the claims under review, the claimants were unable to enjoy the benefit of the advance payments for rent and other associated services in Kuwait when they were forced to cease their operations in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The claims are therefore compensable in principle.

(d) Legal fees other than claim preparation costs

137. A claimant with an office in Kuwait leased its business premises from a Kuwaiti company. After the liberation of Kuwait, the lessor sued the claimant in Kuwait for rent covering the period that included Iraq's invasion and occupation. The lessor's claim was eventually dismissed; the claimant now seeks compensation for legal fees that it incurred in its defence.

138. The Panel finds that the claimant's legal fees were incurred as a direct result of the suit instigated against it by the Kuwaiti company. The claimant's payment of such fees therefore cannot be said to be a direct result of Iraq's invasion and occupation, and are not compensable. 55/

(e) Post-liberation start-up costs in Kuwait

139. A Bahraini claimant alleges that it operated in Kuwait before Iraq's invasion and occupation forced it out of the country. The claimant seeks compensation for costs incurred in re-establishing its Kuwait office, including the cost of airfare, hotel accommodations for staff, and training costs for replacement staff.

140. In its first report, the Panel found that a claim for "restart expenses" incurred by a contractor after Iraq's departure from Kuwait was not compensable because the claimant failed to demonstrate that the claimed expenses were "other than the ordinary expenses incurred as part of an

ongoing business enterprise". 56/ Applying this principle to the present claim, the Panel finds that the claimant has failed to demonstrate that the salaries and training costs of replacement staff in question are other than ordinary expenses that would have been incurred by the claimant as part of its normal business operations and therefore the present claim is not compensable. However, the Panel finds that the claimant's costs of airfare and hotel accommodations constitute extraordinary expenses that were incurred as a direct result of Iraq's invasion and occupation of Kuwait, and therefore this claim is compensable in principle.

5. Payment or relief to others

141. Several claimants with offices in Kuwait, Saudi Arabia, Bahrain and Greece allege that they made payments or incurred additional expenses in providing relief to their employees or to other businesses as a result of Iraq's invasion and occupation of Kuwait. These payments or expenses include reimbursements to employees, security measures, and evacuation costs.

(a) Reimbursement for personal property losses

142. A number of claimants with offices in Kuwait compensated their Kuwait office employees for personal property that was lost or damaged in Kuwait during the period of the invasion and occupation.

143. The Panel refers to its findings in its third report, that such payments made by claimants are compensable in principle, "where [they] were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances". 57/ The Panel finds that the claims for reimbursement for the employees' personal property losses meet these criteria, and are therefore compensable in principle.

(b) Security measures, including gas masks

144. Several claimants with offices in Saudi Arabia, Bahrain and Greece incurred costs to protect their offices from risks associated with Iraq's invasion and occupation of Kuwait. The claimants paid for security and protective measures for their staff, such as gas masks, and for their offices in Bahrain, in the form of microfiche, photocopying, and courier services to transfer documents to offices outside the Middle East.

145. The Panel has previously determined that the cost of reasonable measures designed to protect the lives of employees incurred by an office located in a compensable area is compensable in principle. In particular, the Panel refers to its findings in its third report that claims for purchasing gas masks in Saudi Arabia are compensable in principle. 58/ With respect to the purchase of gas masks in Bahrain, the Panel determines that such costs for personal safety are compensable given the later effect of military operations in the area. 59/ The claim based on the purchase of gas masks in Greece is not compensable, however, as Greece is outside the compensable area. Further, with respect to additional expenses for

security measures for the claimants' offices in Bahrain not related to personal safety, the Panel finds that the costs incurred in the present claims are not compensable in light of the lack of a specific threat to Bahrain and the limited period during which Bahrain was affected by military action. Accordingly, this portion of the claim is not compensable.

(c) Evacuation costs

146. Other claimants that evacuated employees from their offices in Kuwait, Saudi Arabia and Bahrain, claim for expenses such as travel and accommodations.

147. In its third report, the Panel determined that evacuation costs are compensable if actual military operations took place in, or a threat of military action was directed at, the country from which persons were evacuated. 60/ The Panel also found that compensable evacuation costs comprise those costs incurred for transport, accommodation, food and urgent medical treatment. However, only "temporary and extraordinary" evacuation expenses related to the repatriation of employees and which would not have been incurred by a claimant in any event (for example, in repatriating foreign staff at the end of a contract) are compensable. 61/

148. Therefore, costs incurred for the evacuation of employees from a compensable area and within the compensable period, in this instance Kuwait, Saudi Arabia and Bahrain (for the short time that it was affected by military operations), are compensable in principle to the extent that such costs are "evacuation costs" within the scope of the definition stated in the preceding paragraph.

(d) Benefit provided to displaced Kuwaiti company

149. One claimant bank based in Bahrain provided office space free of charge for 15 months, from October 1990 to December 1991, to a Kuwaiti company whose staff was forced to leave Kuwait after Iraq's invasion. The claimant seeks compensation for the monthly rent that it would have earned from leasing the office space under normal conditions.

150. The Panel finds that the claimant's decision to provide office space free of charge to the Kuwaiti company represents an independent business decision. Consequently its alleged loss of the monthly rent on its office premises was not a direct result of Iraq's invasion and occupation of Kuwait and the claim is not compensable.

6. Tangible property in Iraq and Kuwait

151. Several claimants with offices in Kuwait seek compensation for tangible property that was lost or destroyed at their premises in Kuwait during the period of Iraq's occupation. Two other claimants seek compensation for bank notes that were allegedly looted in Kuwait airport during the invasion. The claimants had sent the bank notes by air to their

agents in Kuwait. The bank notes arrived in Kuwait airport on the evening of 1 August 1990, where they allegedly were stolen from a safe at the cargo terminal during Iraq's invasion.

152. The Panel recalls the determinations in its previous reports, that lost property claims are compensable in principle if the record shows that the claimant's assets were in Kuwait as of 2 August 1990 and such assets were lost or destroyed during Iraq's invasion and occupation. 62/ As to the claims for lost or damaged property, other than cash, the Panel finds the claims are compensable in principle. As to claims for the loss of cash, a high level of scrutiny is applied because of the greater potential for fraudulent claims. 63/ With respect to these claims, the Panel finds that the record meets the higher standard and clearly supports the allegations of the claimants. Therefore, these claims also are compensable in principle.

V. INCIDENTAL ISSUES

A. Date of loss

153. The Panel must determine "the date the loss occurred" for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars, and with respect to the awarding of interest at a later date in accordance with Governing Council decision 16. The Panel has been guided by its findings in its previous three reports, as well as the findings of other Panels. The date when the loss occurred depends most significantly on the character of the loss, and the following paragraphs address each loss type in turn.

154. With respect to the claims based on contract losses in this instalment, the Panel notes that the date of loss for each contract normally would depend on the facts and circumstances surrounding the non-performance of the contract. 64/ However, given the large number of contracts before the Commission and the significance of one event (i.e., Iraq's invasion of Kuwait) on contractual relations, the Panel finds, as it did in its third report, that 2 August 1990 represents an appropriate and administrable date of loss for the contract claims now under consideration. 65/

155. With respect to claims for decline in business leading to loss of profits or claims for increased costs, the Panel notes that such losses in this instalment were suffered over extended periods of time, and that such losses were generally spread over the period of loss. Given these circumstances, the Panel selects the mid-point of the relevant compensable period (including potential relevant primary or secondary periods, as the case may be) during which the particular loss occurred as the date of loss. 66/

156. With respect to claims for payment or relief to others, including evacuation costs, the Panel notes that such losses likewise have been incurred throughout the compensable period applicable to the geographic area for which the costs were incurred and, therefore, the Panel selects the mid-point of the compensable period as the date of loss for costs of this nature, that is, 15 November 1990. 67/

157. With respect to claims for loss of tangible assets, the Panel selects 2 August 1990 as the date of loss as that date generally coincides with the claimant's loss of control over the assets in question in this instalment. 68/

B. Currency exchange rate

158. Many of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims and performed all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must determine the appropriate rate of exchange to be applied to claims

where the losses are alleged in other currencies. The Panel has been guided by its previous decisions, and by decisions of other Panels. A particular rule is established for Kuwaiti dinars, and is set forth in paragraph 164.

159. Noting that all prior Commission compensation awards have looked to the United Nations Monthly Bulletin of Statistics (the "UN Monthly Bulletin") for determining commercial exchange rates into United States dollars, the Panel adopts that source for the data to be utilized in exchange rate calculations. The Panel notes that the UN Monthly Bulletin provides a monthly figure for each currency which reflects the average exchange rate for that currency for the last day of the month in question.

160. For claims based on contract losses in this instalment, the Panel, noting that the date of loss set forth in paragraph 154 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

161. For claims for decline in business leading to loss of profits and claims for increased costs, the Panel decides that the appropriate rate will be the average of the rates reported in the UN Monthly Bulletin for the months over which the particular claimant is compensated. 69/

162. For claims for payment or relief to others within this instalment, including evacuation costs and security measures, the Panel, noting that the date of loss set forth in paragraph 156 for such claims is 15 November 1990 and consistent with the decision of the "F1" Panel, decides that the appropriate rate will be that rate reported in the UN Monthly Bulletin for the month of November 1990. 70/

163. For claims for the loss of tangible assets, the Panel, noting that the date of loss set forth in paragraph 157 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

164. The above rules apply to claims stated in currencies other than the Kuwaiti dinar. For claims denominated in Kuwaiti dinars, the Panel, noting the extreme fluctuation in the value of that currency during the period of occupation of Kuwait and the earlier decisions of this and other Panels, adopts the rate of exchange for 2 August 1990, namely the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin. 71/

C. Interest

165. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further specified that it would consider the method of calculation and of payment of interest

at a later date and that "[i]nterest will be paid after the principal amount of awards".

166. With respect to the awarding of interest in accordance with Governing Council decision 16, the Panel notes that the dates of loss defined in paragraphs 154 to 157 above may be relevant to the later choice of the dates from which interest will accrue for all compensable claims.

D. Claims preparation costs

167. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VI. RECOMMENDATIONS

168. Based on the foregoing, the Panel recommends that the amounts set out in annex II below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 14 April 2000

(Signed) Mr. Bernard Audit
Chairman

(Signed) Mr. José María Abascal
Commissioner

(Signed) Mr. David D. Caron
Commissioner

Notes

1/ E2(1) report, paras. 38-48.

2/ Two claimants do not fit this description, having been transferred from a previous instalment. See E2(3) report, annex I.

3/ See, for example, E2(3) report, paras. 175-179 (verification procedures); 180-182 (general methodology); 198-199 (contract losses); 200-201 (evacuation costs); 202 (payment or relief to others); 203-207 (tangible property and cash). See also E2(2) report, paras. 146-152 (decline in business).

4/ E2(1) report, para. 90.

5/ Ibid., para. 86.

6/ Ibid., para. 95.

7/ See, for example, E2(1) report, para. 72.

8/ As the Panel noted, "The rescheduling of such old debts perhaps renewed them under applicable law, but did not make them new debts in the sense of resolution 687 (1991)." E2(1) report, para. 87.

9/ The Panel notes that in some claims, for example, the syndicated loan described in paragraph 39 infra, the initial loan itself called for payment of some instalments after 2 May 1990. Even if the Commission's jurisdiction in such a case turned on the date of repayment of the loan, a decision reserved by the Panel in paragraph 20, the Panel finds that the fact that some instalments of the initial loan fell due after 2 May 1990 does not bring any part of a rescheduled loan within the jurisdiction of the Commission, as a loan transaction must be viewed as a whole between the parties.

10/ Indeed, if, for jurisdictional purposes, the Panel did not treat in the same manner the guarantor's and the debtor's respective obligations, the loans under review that are otherwise excluded under the "arising prior to" clause of Security Council resolution 687 (1991) would, in effect, be brought within the Commission's jurisdiction by a claim based on the guarantee.

11/ Under general principles governing documentary credits, if a bank has been authorized by the issuing bank to pay the beneficiary and such bank properly makes payment, the issuing bank must reimburse the paying bank. See Article 10 of the Uniform Customs and Practice for Documentary Credits (1983 revision), ICC Publication No. 400 (hereinafter the "UCP"); article 16, UCP (discussing a paying bank's right to reimbursement).

12/ The relationship between the issuing bank and the beneficiary of a letter of credit is detailed by the E2A Panel in the E2(4) report, paras. 91-94.

13/ The E2A Panel concluded that the beneficiary-exporter may bring a claim before the Commission based upon the obligation of the Iraqi bank to honour the letter of credit used to finance the sale of goods. See E2(4) report, para. 91.

14/ See E2(1) report, para. 90, regarding performance under construction and supply contracts.

15/ E2(4) report, paras. 92-96.

16/ The Panel considers proof of payment by the claimant to the exporter to be sufficient evidence of its presentation of the documents to the issuing bank.

17/ There is no basis to distinguish between Iraqi private and public parties for the purpose of the Commission's jurisdiction over debts and obligations arising prior to 2 August 1990. See E2(4) report, paras. 86-87; E2(3) report, paras. 106-108.

18/ The Panel notes that most of the loans in the claims described in paragraphs 42 to 44 were rescheduled and therefore would be, in any event, outside the Commission's jurisdiction on that basis.

19/ See note 16, supra, with respect to the evidence sufficient to establish the date of the claimant's presentation of documents to the issuing bank.

20/ See para. 30.

21/ E1(3) report, para. 208; E3(1) report, para. 426; E3(4) report, paras. 449-450. See also E4(3) report, paras. 56-57 and 66. The Panel further observes that, since these notes were substantially past due as of 2 August 1990, the requisite causal link between the non-payment and Iraq's invasion and occupation of Kuwait is not established, and the claims are therefore not compensable for this additional reason.

22/ With respect to claims otherwise within the Commission's jurisdiction, the Panel notes the conclusion of the E2A Panel that the non-payment of goods or services by Iraqi purchasers between 2 August 1990 and 2 August 1991 was generally a direct result of Iraq's invasion and occupation of Kuwait. See E2(4) report, paras. 115-119.

23/ The payment in Iraqi dinars was made possible by a resolution issued by the Iraqi Revolution Command Council on 26 September 1990, which withdrew the Kuwaiti currency from circulation and decreed that borrowers should pay their obligations in Iraqi dinars at the rate of one Iraqi dinar to one Kuwaiti dinar. See also E4(4) report, para. 96.

24/ A judgement in the claimant's favour with respect to Loan 2 is pending on appeal. Given the presence of at least two separate judgements in the claimant's favour, the Panel notes the continuing duty of all claimants to advise the Commission of the recovery of compensation.

25/ Governing Council decision 7, para. 21 (c).

26/ The Panel likens this situation to the consequences of the breakdown of civil order in Kuwait, which created circumstances that allowed property in Kuwait to be looted by third parties.

27/ In this instance, however, the Panel finds no evidence of a loss sustained by the claimant in excess of the amount of the settlement agreement. See annex II.

28/ E2(1) report, para. 145. The Panel further observed:

> "Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait." Ibid.

29/ See E4(1) report, para. 214; E3(2) report, para. 115; E2(4) report, para. 136.

30/ E2(1) report, para. 145.

31/ Paragraph 10 of Governing Council decision 9 requires the Panel to consider whether the parties could have resumed the transaction after the cessation of hostilities subsequent to the lifting of the trade embargo on 3 April 1991. The Panel finds that such a resumption was not possible where, as here, the claimant already had disposed of the goods to a third party in an effort to mitigate its losses. E2(4) report, para. 150.

32/ The claimants generally allege that when the cheques were presented, no obviously suspicious circumstances were apparent to justify refusal of payment.

33/ In valuing the claim, the Panel has been careful to avoid potential duplication of recovery by the claimant for the same loss, and in particular, has ensured that the claimant has not filed a separate decline in business claim.

34/ The Panel further notes that the claimant's alleged damages, stemming from the loss of the cheques in the circumstances described by the claimant, in any event, cannot be said to be a direct result of Iraq's invasion and occupation of Kuwait.

35/ E2(1) report, paras. 136-140. See also E2(3) report, para. 169.

36/ The Panel recognizes that the airline claimant would have applied some funds to meet local expenses, such as salaries of local employees and other office expenses in Iraq, and accordingly, a portion of the funds that would have been locally used and is still available to the claimant is not compensable. See E2(3) report, para. 169.

37/ The Panel refers to the determination in its third report that a compensable loss may arise for the principal amount where the claimant was denied access to the funds as a direct result of Iraq's invasion and occupation, despite having complied with the requirements of the Central Bank of Kuwait. See E2(3) report, para. 170; see also D(2.1) report, para. 99; F1(1.1) report, para. 82.

38/ In view of the fact that the F3 Panel has before it an extremely large claim for compensation that raises similar issues, the Panel defers further consideration of this portion of the present claim until the F3 Panel has rendered its recommendations.

39/ See, e.g., E2(3) report, para. 77.

40/ See, for example, E2(2) report, paras. 139-143.

41/ See generally, E4(1) report, paras. 182-187.

42/ E2(3) report, para. 101; see also E2(2) report, para. 78.

43/ E2(3) report, para. 103.

44/ *Ibid*., para. 105.

45/ *Ibid*., paras. 69-70, 126.

46/ E2(2) report, para. 117; E2(3) report, para. 76.

47/ E2(3) report, paras. 69-70.

48/ See also E4(3) report, paras. 23-26.

49/ Legal proceedings filed by some members of the syndicate in 1994 to obtain possession of the mortgaged properties are still pending.

50/ E2(1) report, paras. 213-215, 237-238.

51/ E2(3) report, para. 161.

52/ *Ibid*., para. 100.

53/ *Ibid*., para. 158.

54/ *Ibid*., paras. 157-158; see also E2(1) report, para. 234.

55/ The Panel notes that claims for legal fees have been considered by other panels in a variety of contexts. Such legal fees have been awarded under some circumstances (see e.g. E1(3) report, paras. 439-441), and rejected under others (see e.g. E1(3) report, paras. 483-486). The Panel concludes that the circumstances found by other panels to warrant the awarding of legal fees are not present here.

56/ E2(1) report, para. 239.

57/ E2(3) report, para. 162. The F1 panel also has decided that reimbursements for the loss of tangible property in Kuwait or Iraq pursuant to contractual obligations are compensable. See F1(1.1) report, paras. 67-68.

58/ E2(3) report, para. 147; see also paras. 61-63.

59/ E2(3) report, paras. 69-70.

60/ *Ibid.*, para. 82, citing E2(2) report, para. 60 and F1(1.1) report, paras. 94-96.

61/ E2(3) report, para. 79, citing E3(1) report, paras. 177-178.

62/ E2(3) report, para. 167; E2(1) report, paras. 119-123.

63/ A high level of scrutiny is similarly applied with respect to valuation of such claims. See E2(3) report, para. 206; E4(1) report, para. 127.

64/ E2(3) report, para. 211.

65/ *Ibid.*

66/ *Ibid.*, paras. 209-210.

67/ *Ibid.*, para. 212.

68/ *Ibid.*, para. 213.

69/ *Ibid.*, para. 216.

70/ *Ibid.*, para. 218; F1(1.1) report, para. 101.

71/ E2(3) report, para. 220.

Annex I

LIST OF REASONS STATED IN ANNEX II FOR DENIAL IN WHOLE OR IN PART OF THE CLAIMED AMOUNT

No.	Reason for denial or reduction of award	Explanation
1	"Arising prior to" exclusion	All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is, thus, outside the jurisdiction of the Commission pursuant to Security Council resolution 687 (1991).
2	Part of all of loss is not direct	The type of loss, in whole or part, is in principle not a direct loss within the meaning of Security Council resolution 687 (1991).
3	Part or all of loss is outside compensable period	All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
4	Part of all of loss is outside compensable area	All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
5	No proof of actual loss	The claimant has not established that any loss was suffered.
6	No proof of direct loss	The claimant has failed to submit sufficient evidence to demonstrate that the loss was a direct result of the invasion and occupation of Kuwait.
7	Non-compensable element of bank balance held in Iraq	A deduction is made to reflect that part of the funds that would have been expended locally by the claimant.
8	Part or all of the loss is unsubstantiated	Claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the Rules.
9	Failure to comply with formal filing requirements	The claimant has failed to meet the formal requirements for the filing of claims as specified under article 14 of the UNCC Provisional Rules for Claims Procedure.
10	Calculated loss is less than loss alleged	Applying the Panel's valuation methodology, the value of the claim was

No.	Reason for denial or reduction of award	Explanation
		assessed to be less than that asserted by the claimant.
11	Insufficient evidence of value	The claimant has produced insufficient evidence to prove all or part of the value of its losses, as required under article 35 of the Rules
12	Reduction to avoid multiple recovery	Although the claim is found to be eligible, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3.
13	Claim preparation costs	The issue of claim preparation costs is to be resolved by the Governing Council at a future date.
14	Interest	The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16. Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.
15	Principal sum not compensable	Where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.

Annex II

RECOMMENDED AWARDS FOR THE FIFTH INSTALMENT OF "E2" CLAIMS

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount b/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
1	Austria	4000135	Kremes Transport gesellschaft m.b.H.	ATS	36,626,941.00	3,110,159.20	Contract	Loans to Kuwaiti parties	ATS	3,073,530.00	237,558.22	N/A	Paras. 74-76	1,318,734.14
							Other tangible property	Office or other equipment	ATS	6,937,771.00	616,690.76	N/A	Paras. 151-152	
							Contract	Accounts receivables	ATS	18,310,760.00	464,485.16	No proof of direct loss	Paras. 82-85	
							Interest	N/A	ATS	6,503,880.00	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
2	Bahrain	4002093	Bank of Bahrain and Kuwait (B.S.C.)	BHD	2,166,229.00	5,700,055.85	Contract	Loans to Kuwaiti/non-Iraqi parties	BHD	1,180,748.75	711,532.01	No proof of direct loss; no proof of actual loss.	Paras. 69-72	717,743.44
							Contract	Loss in the value of collateral	BHD	812,582.00	0.00	No proof of actual loss; no proof of direct loss.	Paras. 123-124	
							Other tangible property	Losses on the sale of shares	BHD	35,641.00	0.00	Part or all of loss is not direct.	Paras. 120, 122	
							Business loss or course of dealing	Increased costs - additional staff costs	BHD	2,314.00	4,615.69	Insufficient evidence of value.	Paras. 131, 136	
							Payment or relief to others	Security or protective measures	BHD	4,852.00	1,595.74	Part or all of loss is not direct.	Paras. 144-145	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Other	Recovery expenses	BHD	20,000.00	0.00	Part or all of loss is unsubstantiated	Para. 14	
							Claim pre-paration costs	N/A	BHD	5,197.00	Awaiting decision	To be resolved by Governing Council	Para. 167	
							Interest	N/A	BHD	84,894.25	Awaiting decision	To be determined as per Governing Council decision 16	Paras. 165-166	
1	Bahrain	4002081	Gulf International Bank B.S.C.	USD	566,851,185.00	566,851,185.00	Contract	Loans to Kuwaiti parties	USD	10,109,098.00	0.00	No proof of direct loss, principal sum not compensable	Paras. 73, 75-76	12,785.00
							Business loss or course of dealing	Decline in business	USD	16,150,192.00	0.00	Part or all of loss is not direct	Paras. 110, 112-115, 117	
							Other tangible property	Losses on the sale of assets	USD	456,379,762.00	0.00	Part or all of loss is not direct	Paras. 119, 121	
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	1,079,896.00	0.00	Part or all of loss is not direct	Paras. 126-130, 133-134	
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	20,714.00	0.00	Part or all of loss is outside compensable period	Paras. 146-148	
							Payment or relief to others	Security or protective measures	USD	12,785.00	12,785.00	N/A	Paras. 144-145	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Payment or relief to others	Rental payments	USD	42,000.00	0.00	Part or all of loss is not direct.	Paras. 149-150	
							Claim preparation costs	N/A	USD	52,361.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	
							Interest	N/A	USD	80,215,197.00	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
4	Bahrain	4005783	Bahrain Kuwait Insurance B.S.C.	KWD	501,145.26	1,734,066.57	Business loss or course of dealing	Increased costs - rental and service payments	KWD	3,007.50	10,088.03	Part or all of loss is outside compensable period.	Paras. 135-136	33,067.63
							Business loss or course of dealing	Decline in business	KWD	67,201.50	0.00	No proof of actual loss, no proof of direct loss.	Paras. 108-109, 112-116	
							Other tangible property	Office or other equipment	KWD	5,154.60	13,214.90	Calculated loss is less than the loss alleged.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - salary and termination payments	KWD	50,348.24	0.00	Part or all of loss is unsubstantiated; part or all of loss is outside compensable period.	Paras. 126-130	
							Business loss or course of dealing	Increased costs - restart costs	KWD	2,889.16	9,764.71	Part or all of loss is not direct.	Paras. 139-140	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Contract	Unpaid accounts receivables	KWD	289,731.78	Consideration of this element of the claim has been deferred to a later instalment			
							Interest	N/A	KWD	77,012.28	Awaiting decision	To be determined as per Governing Council decision 16.	Paras. 165-166	
5	Belgium	4000189	Bank Brussels Lambert	USD	40,533.53	40,533.53	Contract	Letters of credit issued by Kuwaiti banks	USD	40,533.53	0.00	Part or all of loss is not direct.	Paras. 77, 80-81	0.00
6	Belgium	4005975	Natexis Belgium NV	DEM	257,085.01	164,587.07	Contract	Bank guarantee	DEM	249,750.00	0.00	No proof of actual loss.	Paras. 97-99	481.33
							Other	Fees on bank guarantee	DEM	7,335.01	481.33	Part or all of loss is not direct.	Paras. 97-98, 100	
7	Direct Submission	4002422	Gulf Investment Corporation	KWD	34,333,752.00	111,801,494.01	Claim transferred to a different category of claims.							
8	Direct Submission	4002386	Mitsui & Co. (USA), Inc.	USD	8,864,410.84	8,864,410.84	Contract	Loans to Iraqi parties	USD	8,864,410.84	0.00	"Arising prior to" exclusion.	Paras. 50-52	0.00
9	Egypt	4002919	Port Said National Bank for Development	GBP	36,488.00	69,368.82	Other tangible property	Traveller's cheques	GBP	36,488.00	0.00	Part or all of loss is not direct.	Paras. 95-96	0.00
10	Egypt	4002920	Misr International Bank	USD	4,974,508.89	4,974,508.89	Contract	Promissory notes	USD	4,974,508.89	0.00	"Arising prior to" exclusion.	Paras. 63-64	0.00
11	Egypt	4002921	Banque Misr Société Anonyme Egyptienne	USD	28,217.72	28,217.72	Other tangible property	Bank accounts	USD	28,217.72	28,217.72	N/A	Paras. 102-103	28,217.72

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
12	Egypt	4002922	Arab African International Bank Head Office Cairo	USD	68,772,877.42	68,772,877.42	Contract	Loans to Iraqi parties	USD	68,772,877.42	0.00	"Arising prior to" exclusion.	Paras. 36-41, 44-45, 48-49, 51-52, 53-54	0.00
13	Egypt	4005976	Egypt Air Organization	USD	106,775,784.50	106,775,784.50	Other tangible property	Bank accounts	USD	106,775,784.50	96,069,860.33	Non compensable element of bank balance held in Iraq.	Paras. 102-103	96,069,860.33
14	France	4201894	Union de Banques Arabes et Françaises	USD	521,861,713.38	521,861,713.38	Contract	Loans to Iraqi parties	USD	435,152,923.24	0.00	"Arising prior to" exclusion.	Paras. 36-41, 60-62	0.00
							Contract	Letters of credit issued by Iraqi banks	USD	86,708,790.14	0.00	Part or all of loss is unsubstantiated.	Paras. 55-59	
15	France	4001954	Banque Nationale de Paris	FRF	711,641,903.05	177,440,216.30	Contract	Loans to Iraqi parties	FRF	706,700,944.50	0.00	"Arising prior to" exclusion; part or all of loss is unsubstantiated.	Paras. 60-62	0.00
				USD	41,682,509.13				USD	39,752,735.00				
							Contract	Letters of credit issued by Iraqi banks	FRF	4,940,958.55	0.00	Part or all of loss is unsubstantiated.	Paras. 55-59	
									USD	1,929,774.13				
16	France	4001976	Banque Française du Commerce Extérieur	FRF	57,434,374.45	40,952,945.24	Contract	Loans to Iraqi parties	USD	29,196,378.68	0.00	Part or all of loss is unsubstantiated.	Para. 14	0.00
				USD	29,996,278.68		Contract	Letters of credit issued by Iraqi banks	FRF	57,434,374.45	0.00	"Arising prior to" exclusion; part or all of loss is unsubstantiated.	Paras. 55-59	
									USD	799,900.00				

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
17	France	4002076	Société Générale	DEM	15,595,134.00	199,137,616.69	Contract	Loans to Iraqi parties	DEM	14,730,319.00	0.00	Part or all of loss is unsubstantiated	Para. 14	0.00
				USD	107,751,177.00				USD	107,590,177.00				
				FRF	7,351,166.00		Contract	Letters of credit issued by Iraqi banks	DEM	864,815.00	0.00	Part or all of loss is unsubstantiated	Paras. 55-59	
									FRF	7,351,166.00				
									USD	161,000.00				
18	Germany	4000549	Bayerische Vereinsbank AG	DEM	30,558,902.79	19,563,958.25	Contract	Letters of credit issued by Iraqi banks	DEM	30,558,902.79	0.00	"Arising prior to" exclusion.	Paras. 55-58	0.00
19	Germany	4000557	Deutsche Bank AG	DEM	11,199,733.14	7,170,123.65	Contract	Loans to Iraqi parties	DEM	11,199,733.14	0.00	"Arising prior to" exclusion.	Paras. 47, 51-52	0.00
20	Germany	4000579	Westdeutsche Landesbank Girozentrale	DEM	58,371,276.08	37,369,574.96	Contract	Loans to Iraqi parties	DEM	58,371,276.08	0.00	"Arising prior to" exclusion.	Paras. 42-43, 45	0.00
21	Germany	4000860	Société Générale Elsassische Bank & Co	DEM	138,063,694.70	88,389,049.10	Contract	Loans to Iraqi parties	DEM	138,063,694.70	0.00	"Arising prior to" exclusion.	Paras. 42-43, 45	0.00
22	Germany	4000861	Société Générale Elsassische Bank & Co.	DEM	18,202,242.38	11,653,164.14	Contract	Loans to Iraqi parties	DEM	18,202,242.38	0.00	"Arising prior to" exclusion.	Paras. 60-62	0.00
23	Greece	4005962	National Westminster Bank PLC	GRD	9,538,135.00	61,667.65	Payment or relief to others	Security or protective measures	GRD	9,538,135.00	0.00	Part or all of loss is outside compensable area.	Paras. 144-145	0.00
24	Greece	4005963	Arab Hellenic Bank SA	USD	583,437.00	583,437.00	Claim transferred to a different category of claims.							

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
25	Greece	4005964	Bank of Greece	GRD	13,281,169.00	85,867.78	Contract	Unpaid accounts receivables	GRD	13,281,169.00	0.00	Failure to comply with formal filing requirements	Para. 14	0.00
26	India	4000512	State Bank of India, New Delhi	USD	511,000.00	511,000.00	Other tangible property	Cash	USD	511,000.00	415,471.36	Part or all of loss is unsubstantiated	Paras. 151-152	415,471.36
27	India	4000678	State Bank of India	USD	170,808.00	170,808.00	Contract	Management fees	USD	142,279.00	0.00	Part or all of loss is unsubstantiated	Paras. 109, 112-116	0.00
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	28,529.00	0.00	Part or all of loss is unsubstantiated	Paras. 126-129	
28	India	4002299	State Bank of Patiala/Vijay Arts Handicrafts	USD	117,168.00	117,168.00	Contract	Unpaid accounts receivables	USD	117,168.00	0.00	No proof of direct loss	Paras. 82-85	0.00
29	India	4002769	State Bank of India	GBP	13,171.63	26,122,967.83	Contract	Letters of credit issued by Iraqi banks	GBP	13,171.63	Consideration of this claim has been deferred to a later instalment		Paras. 55-59	N/A
				USD	26,092,504.41				USD	26,092,504.41				
				INR	77,881.63				INR	77,881.63				
30	Italy	4001299	Banca Commerciale Italiana	ITL	86,861,135.00	74,925.50	Contract	Letters of credit issued by Kuwaiti banks	ITL	86,861,135.00	74,405.63	N/A	Paras. 77-79	74,405.63
31	Japan	4000895	The Tokio Marine & Fire Insurance Co. Ltd	JPY	5,463,182.00	37,852.22	Other tangible property	Office or other equipment	JPY	2,239,503.00	11,393.81	Part or all of loss is unsubstantiated	Paras. 151-152	29,513.40
							Payment or relief to others	Personal property reimbursement	JPY	3,223,679.00	18,119.66	Part or all of loss is unsubstantiated	Paras. 142-143	

<table>
<tr><th rowspan="2">No.</th><th rowspan="2">Country</th><th rowspan="2">UNCC claim number</th><th rowspan="2">Claimant</th><th colspan="3">Total amount claimed a/</th><th colspan="4">Reclassified amount d/</th><th colspan="4">Decision of the Panel of Commissioners e/</th></tr>
<tr><th colspan="2">Amount claimed in original currency b/</th><th>Total amount claimed restated in USD c/</th><th>Type of loss</th><th>Sub category</th><th colspan="2">Amount claimed in original currency</th><th>Amount recommended in USD</th><th>Reasons for denial or reduction of award</th><th>Report citation</th><th>Total award in USD</th></tr>
<tr><td rowspan="1">12</td><td>Jordan</td><td>[illegible]</td><td>Union Bank for Savings & Investment</td><td>USD</td><td>281,149.00</td><td>281,149.00</td><td>Other tangible property</td><td>Cash</td><td>USD</td><td>281,149.00</td><td>281,149.00</td><td>N/A</td><td>Paras 151-152</td><td>281,149.00</td></tr>
<tr><td rowspan="3">13</td><td rowspan="3">Luxembourg</td><td rowspan="3">[illegible]</td><td rowspan="3">Vereinsbank International Societe Anonyme</td><td>DEM</td><td>[illegible]</td><td rowspan="3">[illegible]</td><td rowspan="3">Contract</td><td rowspan="3">Letters of credit issued by Iraqi banks</td><td>DEM</td><td>[illegible]</td><td rowspan="3">0.00</td><td rowspan="3">"Arising prior to" exclusion</td><td rowspan="3">Paras 55-59</td><td rowspan="3">0.00</td></tr>
<tr><td>USD</td><td>765,192.00</td><td>USD</td><td>765,192.00</td></tr>
<tr><td>GBP</td><td>114,509.00</td><td>GBP</td><td>114,509.00</td></tr>
<tr><td>14</td><td>Netherlands</td><td>[illegible]</td><td>ABN Amro Bank N.V. Head Office</td><td>NLG</td><td>[illegible]</td><td>[illegible]</td><td>Contract</td><td>Letters of credit issued by Kuwaiti banks</td><td>NLG</td><td>[illegible]</td><td>[illegible]</td><td>N/A</td><td>Paras 77-79</td><td>[illegible]</td></tr>
<tr><td>15</td><td>Netherlands</td><td>[illegible]</td><td>ABN AMRO Bank N.V.</td><td>USD</td><td>[illegible]</td><td>[illegible]</td><td>Contract</td><td>Loans to Kuwaiti party; standby letters of credit</td><td>USD</td><td>[illegible]</td><td>0.00</td><td>No proof of direct loss</td><td>Paras 73, 75-76, 82-85</td><td>0.00</td></tr>
<tr><td rowspan="4">16</td><td rowspan="4">Saudi Arabia</td><td rowspan="4">[illegible]</td><td rowspan="4">Saudi Hollandi Bank</td><td rowspan="4">SAR</td><td rowspan="4">[illegible]</td><td rowspan="4">[illegible]</td><td>Payment or relief to others</td><td>Security or protective measures</td><td>SAR</td><td>[illegible]</td><td>[illegible]</td><td>N/A</td><td>Paras 144-145</td><td rowspan="4">[illegible]</td></tr>
<tr><td>Business loss or course of dealing</td><td>Increased costs additional staff costs</td><td>SAR</td><td>[illegible]</td><td>[illegible]</td><td>N/A</td><td>Paras 131-133</td></tr>
<tr><td>Payment or relief to others</td><td>Evacuation/ repatriation/ relocation</td><td>SAR</td><td>[illegible]</td><td>[illegible]</td><td>Part or all of loss is unsubstantiated</td><td>Paras 146-148</td></tr>
<tr><td>Claim preparation costs</td><td>N/A</td><td>SAR</td><td>12,000.00</td><td>Awaiting decision</td><td>To be resolved by Governing Council</td><td>Para 167</td></tr>
</table>

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
37	Saudi Arabia	4002441	National Co. for Co-operative Insurance	SAR	188,943.42 f/	50,452.18	Payment or relief to others	N/A	SAR	147,943.42	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00
							Payment or relief to others	Security or protective measures	SAR	42,000.00	0.00			
38	Thailand	4001595	Bangkok Bank Limited	USD	72,540,486.99	72,540,486.99	Contract	Letters of credit issued by Iraqi banks	USD	72,540,486.99	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
39	Tunisia	4002590	Banque Nationale de Développement Touristique "BNDT"	TND	1,307,600.00	1,170,267.13	Business loss or course of dealing	Decline in business	TND	1,307,600.00	0.00	Part or all of loss is outside compensable area.	Paras. 108, 111-115, 118	0.00
40	Tunisia	4002592	Banque Tuniso-Koweitienne de Développement	TND	16,200,000.00	18,815,331.01	Business loss or course of dealing	Decline in business	TND	16,200,000.00	0.00	Part or all of loss is not direct; part or all of loss is unsubstantiated	Paras. 108, 111-115, 118	0.00
41	Tunisia	4002593	Union Internationale de Banques	TND	1,337,949.00	1,553,967.74	Contract	Letters of credit; loans	TND	1,249,949.00	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
							Business loss or course of dealing	Decline in business	TND	88,000.00				
42	Tunisia	4002594	Société Tunisienne de Banque	TND	13,400,000.00	15,563,298.49	Business loss or course of dealing	Decline in business	TND	6,000,000.00	0.00	Failure to comply with formal filing requirements.	Para. 14	0.00

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Payment or relief to others	N/A	TND	6,400,000.00	0.00			
							Other	Currency exchange losses	TND	1,300,000.00	0.00			
43	Turkey	4001628	T. Garanti Bankasi A.S.	USD	8,628,166.00	8,628,166.00	Contract	Letters of credit issued by Iraqi banks	USD	8,628,166.00	Consideration of this claim has been deferred to a later instalment.		Paras. 55-59	N/A
44	Turkey	4001631	Pamukbank T.A.S. General Management	USD	806,038.56	806,038.56	Contract	Loans to Iraqi parties	USD	806,038.56	0.00	"Arising prior to" exclusion	Paras. 60-62	0.00
45	Turkey	4001650	TC Ziraat Bankasi A.S.	USD	9,420,960.47	9,420,960.47	Contract	Promissory notes	USD	9,420,960.47	0.00	"Arising prior to" exclusion	Paras. 63-64	0.00
46	United Kingdom	4001091	M.W. Marshall & Co. Limited	KWD	215,544.00	758,787.26	Business loss or course of dealing	Decline in business	KWD	114,855.00	347,879.11	Calculated loss is less than loss alleged.	Paras. 108-109, 112-116	510,264.44
				GBP	4,015.00		Other tangible property	Office or other equipment	KWD	12,530.63	20,989.62	Part or all of loss is unsubstantiated.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - salary and termination payments	KWD	85,155.00	140,837.37	Part or all of loss is unsubstantiated; reduction to avoid multiple recovery.	Paras. 126-129	
							Other tangible property	Cash	KWD	323.00	558.34	Part or all of loss is unsubstantiated.	Paras. 151-152	
							Business loss or course of dealing	Increased costs - advance rental payments	KWD	2,681.00	0.00	Part or all of loss is unsubstantiated.	Paras. 135-136	

o.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Claim preparation costs	N/A	GBP	6,815.00	Awaiting decision	To be resolved by Governing Council.	Para. 167	
47	United Kingdom	4001998	Bank of Credit & Commerce International (Overseas) Limited (BCCI)	USD	1,623,461.00	1,623,461.00	Business loss or course of dealing	Decline in business	USD	66,084.00	33,042.00	Insufficient evidence of value; part or all of loss is unsubstantiated.	Paras. 86, 89, 94	33,042.00
							Other tangible property	Traveller's cheques	USD	1,458,012.00	0.00	Part or all of loss is unsubstantiated; no proof of actual loss.	Paras. 86-88, 90-93	
							Other tangible property	Returned settlement cheques	USD	16,305.00	0.00	Part or all of loss is unsubstantiated; no proof of direct loss.	Paras. 88, 91	
							Business loss or course of dealing	Increased costs - traveller's cheques printing	USD	3,060.00	0.00	Part of all of loss is unsubstantiated.	Paras. 89, 91	
							Business loss or course of dealing	Increased costs related staff costs	USD	80,000.00	0.00	Part or all of loss is unsubstantiated.	Paras. 88, 91	
48	United Kingdom	[illegible]	Bank of Credit & Commerce International (Overseas) Limited (BCCI)	USD	[illegible]	[illegible]	Contract	Letters of credit issued by Iraqi banks	USD	[illegible]	Consideration of this claim has been deferred to a later instalment		Paras. [illegible]	N/A
49	United Kingdom	[illegible]	The Royal Bank of Scotland plc	GBP	[illegible]	[illegible]	Contract	Unpaid accounts receivables	GBP	[illegible]	[illegible]	Part or all of loss is unsubstantiated	Paras. [illegible]	[illegible]

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
50	United Kingdom	4002136	Hon Hing Hong	USD	5,832,174.00	5,832,174.00	Other tangible property	Office or other equipment	USD	1,026,944.00	0.00	Failure to comply with formal filing requirements	Para. 18	0.00
							Other tangible property	Bank balances	USD	210,000.00	0.00			
							Other tangible property	Cash	USD	1,178,000.00	0.00			
							Real property	Damage to premises	USD	176,000.00	0.00			
							Business loss or course of dealing	Decline in business	USD	2,117,650.00	0.00			
							Other	N/A	USD	721,510.00	0.00			
52	United Kingdom	[illegible]	The Thomas Cook Group Ltd	GBP	1,495,175.00	2,505,498.20	Other tangible property	Traveller's cheques	GBP	1,161,200.20	44,478.00	Part or all of loss is unsubstantiated; no proof of actual loss	Paras. 86-87, 90-92	154,389.11
							Contract	Unpaid accounts receivables	GBP	233,326.00	109,911.11	Part or all of loss is unsubstantiated	Paras. 72-81	
53	United Kingdom	[illegible]	Guardian Royal Exchange Assurance PLC	KWD	356,717.00	1,262,074.78	Contract	Unpaid account receivables	KWD	364,717.00	Consideration of this claim has been deferred to a later instalment		N/A	N/A
53	United States of America	[illegible]	American Express International Inc	USD	2,283,245.00	2,283,245.00	Business loss or course of dealing	Decline in business	USD	724,000.00	211,756.00	Calculated loss is less than loss alleged; no proof of direct loss; part or all of loss is unsubstantiated	Paras. 108-109, 112-118	481,108.78

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Contract	Unpaid accounts receivables	USD	1,175,407.00	459,561.50	Part or all of loss is unsubstantiated; part or all of loss is not direct.	Paras. 63-65, 81-83	
							Other tangible property	Bank balances	USD	161,722.50	0.00	Part or all of loss is unsubstantiated.	Paras. 170-171	
							Business loss or course of dealing	Increased costs - salary and termination payments	USD	13,247.00	0.00	Part or all of loss is unsubstantiated.	Paras. 126-129; 131-133	
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	155,161.50	5,961.14	No proof of direct loss; part or all of loss is not direct; part or all of loss is unsubstantiated.	Paras. 146-158	
							Payment or relief to others	Personal property reimbursement	USD	7,480.32	0.00	Part or all of loss is unsubstantiated.	Paras. 142-143	
							Payment or relief to others	Security or protective measures	USD	16,852.00	6,388.00	Part or all of loss is not direct.	Paras. 144-145	
34	United States of America	4002217	American Express Travel Related Services Co. Inc.	USD	317,247.00	317,247.00	Other tangible property	Traveller's cheques	USD	309,296.00	68,644.77	Part or all of loss is unsubstantiated; no proof of actual loss.	Paras. 86-88, 90-91	76,595.77
							Other	Auditors fees	USD	7,951.00	7,951.00	N/A	Paras. 88, 91	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
55	United States of America	4002249	Merrill Lynch & Co. Inc.	USD	6,632,982.61	6,632,982.61	Business loss or course of dealing	Increased costs - salary and termination payments	USD	1,087,067.16	615,741.00	Calculated loss is less than loss alleged; part or all of loss is not direct	Paras. 127-129, 131-141	721,741.00
							Payment or relief to others	Evacuation/ repatriation/ relocation	USD	167,289.00	100,543.00	Part or all of loss is unsubstantiated	Paras. 146-148	
							Payment or relief to others	Security or protective measures	USD	3,181.00	1,181.00	N/A	Paras. 144-145	
							Business loss or course of dealing	Increased costs - advance payments and deposits	USD	45,149.00	4,315.00	Part or all of loss is unsubstantiated	Paras. 110-111	
							Other tangible property	Office or other equipment	USD	8,508.00	901.00	Part or all of loss is unsubstantiated	Paras. 151-152	
							Business loss or course of dealing	Decline in business	USD	476,667.00	0.00	Part or all of loss is unsubstantiated	Paras. 108-109, 112-116	
							Business loss or course of dealing	Permanent loss of value of business	USD	2,120,000.00	0.00	Part or all of loss is unsubstantiated	Paras. 108-109, 112-116	
							Other tangible property	Interest and charges on bank balance	USD	200,790.90	Consideration of this claim has been deferred to a later instalment		Paras. 104-106	
							Other	Legal fees	USD	28,010.20	0.00	Part or all of loss is not direct	Paras. 117-118	

No.	Country	UNCC claim number	Claimant	Total amount claimed a/			Reclassified amount d/				Decision of the Panel of Commissioners e/			
				Amount claimed in original currency b/		Total amount claimed restated in USD c/	Type of Loss	Sub category	Amount claimed in original currency		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total award in USD
							Other	Legal fees, including claim preparation costs	USD	97,255.25	Awaiting decision	Part or all of loss is unsubstantiated; to be resolved by Governing Council g/	Para. 167	
56	United States of America	4002256	The Chase Manhattan Bank (National Association)	USD	11,828,806.26	11,828,806.26	Contract	Loans to Iraqi parties	USD	11,828,806.26	0.00	"Arising prior to" exclusion.	Paras. 36-41	0.00
57	United States of America	4002152	The Bank of New York	USD	26,281,300.06	26,281,300.06	Contract	Loans to Iraqi parties	USD	26,281,300.06	0.00	"Arising prior to" exclusion.	Paras. 36-41	0.00

Notes to table of recommended awards

a/ In accordance with the Governing Council's decision taken at its twenty-seventh session held in March 1998, the Panel has not considered unsolicited supplements or amendments submitted after 11 May 1998 to previously filed claims. Accordingly, the total claimed amounts stated in this table include only those supplements and amendments to the original claimed amounts submitted prior to 11 May 1998 or submitted after that date where these comply with the requirements of the Commission.

b/ Currency codes: ATS (Austrian schilling), BHD (Bahraini dinar), DEM (Deutsche mark), FRF (French franc), GBP (Pound sterling), GRD (Greek drachma), INR (Indian rupee), ITL (Italian lira), JPY (Japanese yen), KWD (Kuwaiti dinar), NLG (Netherlands guilder), SAR (Saudi Arabian riyal), TND (Tunisian dinar), USD (United States dollar).

c/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 160 to 164.

d/ Since many claimants have presented similar losses in different ways, the Panel has recategorized certain of the losses using standard classifications, as appropriate. This procedure is intended to ensure consistency, equality of treatment and fairness in the analysis of the claims and is consistent with the practice of other panels of the Commission.

e/ As used in this table, "N/A" means not applicable.

f/ The Panel notes that the claim form lists the total amount claimed as SAR 188,943. In reviewing the claim, however, the Panel has determined the claimant has claimed two separate loss amounts which total SAR 189,943.42. These separate loss amounts are reflected in the reclassified amount column.

g/ With respect to legal fees incurred in closing the claimant's office, the Panel finds that the claimant has failed to substantiate this portion of the claim. The Panel makes no recommendation with respect to that portion of the claim regarding claim preparation costs.

Annex VII

UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/Dec.103 (2000)
29 September 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the fifth instalment of "E2" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fifth instalment of "E2" claims, covering 57 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in annex II of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Austria	1	-	3,130,109	1,318,734
Bahrain	3	-	573,320,775	783,596
Belgium	1	1	205,321	491
Egypt	2	3	180,625,777	96,098,098

1/ The text of the report appears in document S/AC.26/2000/17

GE.00-63636

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
France	-	4	919,391,692	nil
Germany	-	5	164,165,870	nil
Greece	-	2	147,535	nil
India	1	2	798,976	615,471
Italy	1	-	74,926	74,806
Japan	1	-	37,852	29,511
Jordan	1	-	283,189	283,189
Luxembourg	-	1	2,376,469	nil
Netherlands	1	1	8,466,802	56,497
Saudi Arabia	1	1	575,061	489,111
Tunisia	-	3	35,548,597	nil
Turkey	-	2	10,214,978	nil
United Kingdom	4	1	11,841,168	614,305
United States	3	2	45,714,752	1,641,695
Corporate claim directly submitted by Mitsui and Co. (U.S.A.) Inc. (claim No. 4002386)	-	1	8,854,411	nil
Total	20	29	1,366,415,561	102,010,116

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec.100 (2000)).

4. Recalls that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

5. Notes that no recommendations have been made at this stage for eight claims referred to in annex II of the report.

6. Requests the Executive Secretary to provide a copy of the report to the Secretary General, to the Government of the Republic of Iraq and to each respective Government.

Annex VIII

UNITED
NATIONS

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Security Council

Distr.
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S/AC.26/2000/18
29 September 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE TENTH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning seventeen claims included in the tenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. Based on its review of the claims presented to it to date and the findings of other panels of Commissioners contained in their reports and recommendations, this Panel has set out some general propositions concerning construction and engineering claims filed on behalf of corporations (the ""E3" Claims"). The general propositions are contained in Annex I entitled "Summary of General Propositions" (the "Summary"). The Summary forms part of, and is intended to be read together with, this report.

3. Each of the claimants included in the tenth instalment had the opportunity to provide the Panel with information and documentation concerning the claims. The Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel has further amplified both procedural and substantive aspects of the process of formulating recommendations in the Summary to its consideration of the individual claims.

I. PROCEDURAL HISTORY

A. The procedural history of the claims in the tenth instalment

4. A summary of the procedural history of the "E3" Claims is set down in paragraphs 10 to 18 of the Summary.

5. On 8 September 1999, the Panel issued a procedural order relating to the claims included in the tenth instalment. In view of:

(a) the apparent complexity of the issues raised;

(b) the volume of the documentation underlying the claims; and/or

(c) the amount of compensation sought by the claimants,

the Panel decided to classify each of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. In accordance with that Rule, the Panel decided to complete its review of the claims within 12 months of the date of its procedural order.

6. In view of the review period and the available information and documentation, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. Nonetheless, due process, the provision of which is the responsibility of the Panel, has been achieved by the insistence of the Panel on the observance by claimants of the article 35(3) requirement for sufficient documentary and other appropriate evidence.

7. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work.

B. The claimants

8. This report contains the Panel's findings with respect to the following claims for losses allegedly caused by Iraq's invasion and occupation of Kuwait:

(a) the Consortium constituted by Abay Engineering S.A., a corporation existing under the laws of Belgium, and Spie Batignolles, a corporation existing under the laws of France, which seeks compensation in the total amount of 12,168,700 United States dollars (USD);

(b) Sissa Construction and Management Corporation, a corporation organised under the laws of Canada, which seeks compensation in the total amount of USD 159,718,942;

(c) Alexandria Shipyard Company, a corporation organised under the laws of Egypt, which seeks compensation in the total amount of USD 15,356,626;

(d) Misr Concrete Development Company, a corporation organised under the laws of Egypt, which seeks compensation in the total amount of USD 24,864,614;

(e) Technip S.A., a corporation organised under the laws of France, which seeks compensation in the total amount of USD 44,542,630;

(f) Enterprise Muller Freres - Travaux Publics S.A., a corporation organised under the laws of France, which seeks compensation in the total amount of USD 1,552,629;

(g) ABB Schaltanlagen GmbH, a corporation organised under the laws of Germany, which seeks compensation in the total amount of USD 16,635,422;

(h) Irbid District Electricity Company, a corporation organised under the laws of Jordan, which seeks compensation in the total amount of USD 1,444,824;

(i) Jordan Electric Power Company, a corporation organised under the laws of Jordan, which seeks compensation in the total amount of USD 2,363,213;

(j) The Jordanian Electrical and Mechanical Engineering Company, a corporation organised under the laws of Jordan, which seeks compensation in the total amount of USD 228,670;

(k) Atlantic Gulf and Pacific Company of Manila, Inc., a corporation organised under the laws of the Philippines, which seeks compensation in the total amount of USD 288,817;

(l) Polimex-Cekop Limited, a corporation organised under the laws of Poland, which seeks compensation in the total amount of USD 51,683,454;

(m) Bechtel Limited, a corporation organised under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of USD 10,013,427;

(n) Davy McKee (London) Limited, a corporation organised under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of USD 3,047,678;

(o) ABB Lummus Crest Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 30,230,415;

(p) John Brown, a division of Trafalgar House, Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 10,065,777; and

(q) Overseas Bechtel, Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 4,915,980.

9. These amounts claimed in United States dollars represent the alleged loss amounts after correction for applicable exchange rates as described in paragraphs 55 to 57 of the Summary.

II. THE CLAIM OF THE CONSORTIUM CONSTITUTED BY ABAY ENGINEERING S.A. AND SPIE BATIGNOLLES

10. The Consortium constituted by Abay Engineering S.A., a corporation existing under Belgian law, and Spie Batignolles, a corporation existing under French law, (the "Consortium") entered into an agreement on 15 February, 1989 with ARADET, "a panarab company with headquarters in Iraq". The agreement (the "STTP contract") provided for the construction in Al-Qaim, Iraq of a plant for the production of sodium tripolphosphate.

11. The Consortium asserts that work under the STTP contract came to a complete standstill in November 1990, as a result of Iraq's invasion and occupation of Kuwait.

12. The Consortium seeks compensation in the total amount of USD 12,168,700 for contract losses, loss of profits, loss of tangible property, and "mitigation expenses".

A. Contract losses

1. Facts and contentions

13. The Consortium seeks compensation in the amount of USD 1,142,467 for "unpaid engineering services" provided in connection with the STTP contract.

14. The STTP contract came into effect on 22 May 1989. The total contract value was 115,365,000 Deutsche Mark (DEM) plus 1,176,000 Iraqi dinars (IQD). The amount payable by ARADET under the STTP contract was guaranteed by APICORP, a company created under the auspices of the Organisation for Arab Petroleum Exporting Companies, up to an amount of DEM 130,000,000. The "Complete and Ready for Commissioning Certificate" was due to be issued by August 1991, and the "Taking Over Certificate" was due to be issued by December 1991.

15. The Consortium asserts that, by November 1990, work on the STTP contract had come to a "complete standstill". The Consortium's employees were evacuated from Iraq from September 1990 to January 1991.

16. According to the fully motivated award dated 25 September 1997 of the tribunal appointed by the International Court of Arbitration of the International Chamber of Commerce ("ICC"), negotiations continued through 1991 and into 1992 in an attempt to re-negotiate the contract to meet the changed circumstances. The attempt to re-negotiate the contract failed in May 1992, when APICORP's board of directors refused to approve the new arrangements. In the course of the negotiations, the Consortium took the opportunity to set out in full its losses on the project.

17. On 1 September 1992, the Consortium requested APICORP to pay, under the guarantee, the amounts due by ARADET under clause 44 of the STTP

Contract. APICORP refused to do so and on 22 November 1993 the Consortium initiated arbitration proceedings against APICORP at the International Court of Arbitration of the ICC.

18. In its claim, the Consortium put forward all its losses on the project. In the event, the tribunal appointed by the International Court of Arbitration of the ICC held that the contract had been frustrated on 31 May 1992, and the Consortium succeeded in recovering payment under sub-clauses 44.1 and 43.3 of the STTP contract.

19. Sub-clause 44.1 reads as follows:

> "Frustration:
>
> In the event of the Contract being frustrated the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 43 (Outbreak of War and Termination) hereof if the Contract had been terminated under the provisions of Clause 43 hereof."

20. Sub-clause 43.3 reads as follows:

> "Payment if Contract terminated:
>
> If the Contract shall be terminated as aforesaid the Contractor shall be paid by the Employer (in so far as such amounts or items shall not have already been covered by payments on accounts made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:
>
> (a) The amount payable in respect of any preliminary items, so far as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed.
>
> (b) The cost of materials or goods reasonably ordered for the Works or for use in connection with the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him).
>
> (c) A sum, to be certified by the Engineer, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works, in so far as such expenditure shall not have been covered by the payments in this Sub-Clause before mentioned.
>
> (d) The reasonable cost of removal under Sub-Clause 2 of this Clause and (if required by the Contractor) return thereof to the

Contractor's Works in his country of registration or to any other destination at no greater cost.

(e) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided always that, against any payments due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Plant and materials, and any sum previously paid by the Employer to the Contractor in respect of the execution of the Works."

21. The ICC held that the total amount due to the Consortium under these clauses was DEM 53,878,221. This amount was in respect of three components: (i) cost of work executed until 31 December 1991; (ii) additional costs incurred until 31 December 1991; and (iii) recurrent costs (storage, insurance, etc.) incurred between 1 January and 31 May 1992.

22. By 16 September 1999, APICORP had paid the Consortium the total amount of the arbitration award.

23. The Consortium asserts that the arbitration award does not compensate it for the full amount of its losses incurred under the STTP contract. It seeks compensation before the Commission in the amount of USD 1,142,467 for "engineering performed but not considered by the Award". The Consortium asserts that as at 2 August 1990, it had performed 94.33 per cent of the engineering work, but delivered and invoiced only 86.25 per cent of the equipment. This meant that 8.08 per cent of the engineering services, relating to the equipment never delivered, in the amount of USD 1,142,467, remains uninvoiced and unpaid.

24. The Consortium maintains in its response to the article 34 notification that there is no overlap between its claim before the Commission and the arbitration award. It asserts that the claim for unpaid engineering services was included in the submission for arbitration but no award was made in respect of it. Indeed, it asserts that, for reasons unclear to it, the ICC did not consider this point of its submission.

2. Analysis and valuation

25. On the evidence put before it, in the view of the Panel, the Consortium maintained the claim for unpaid engineering services in the arbitration. The Consortium asserts that no award was made in respect of that claim.

26. However, first, it is not clear to the Panel that that is in fact the case. The Consortium certainly did not demonstrate that the award of over DEM 53 million did not in fact include an allowance for the unpaid engineering services. As such, the Consortium has not established that it

suffered a loss. But, even if there was no such allowance, that would simply mean that the arbitral panel had rejected the claim as not maintainable. There might be many reasons why an arbitral tribunal after a lengthy and detailed investigation of the matter might have reached such a conclusion. These reasons could include a determination that no such loss occurred or that it was otherwise caused. What is clear is that there is no material before the Panel upon which it can conclude that this claim represents an uncompensated loss. Proof of a loss is essential if a claim is to be considered by the Panel.

3. Recommendation

27. The Panel recommends no compensation for contract losses.

B. Loss of profits

28. The Consortium seeks compensation in the amount of USD 4,133,008 (DEM 6,676,874) for loss of profits. The Consortium states that for 1989-1992, Spie Batignolles and its wholly-owned subsidiary Abay Engineering had "group-wide overheads (head office general expenses)" averaging 9.84 per cent. Its gross profit margin was three per cent. It therefore asserts that the total of "lost profits" is 12.84 per cent of DEM 52,000,578 (the total contract price less amounts already paid), namely DEM 6,676,874, which the Consortium converted to USD 4,133,008.

29. The Panel finds that the Consortium had an existing contractual relationship with ARADET.

30. However, the Panel finds that the continuation of this relationship was not rendered impossible directly by Iraq's invasion and occupation of Kuwait. As noted at paragraph 18, supra, the ICC, in its arbitration award, found that the STTP contract was frustrated only in May 1992 when it became clear that the contract would not be resumed because of the trade sanctions against Iraq. The Panel finds that any loss of profits incurred by the Consortium were not directly caused by Iraq's invasion and occupation of Kuwait, but by the trade sanctions against Iraq. These sanctions prevented the resumption of the STTP contract after the cessation of hostilities in Kuwait.

31. The Panel further finds that the Consortium failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary.

32. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

33. The Consortium seeks compensation in the amount of USD 3,311,645 for loss of tangible property. The Consortium asserts that by 2 August 1990 most of the essential assets required for the project had been deployed to the project site. The Consortium asserts that the assets were abandoned on site at the time the works were stopped. It has been unable to recover the assets since their abandonment.

34. The Consortium did not state the precise circumstances of the loss of the assets. Its response to the article 34 notification asserts that "over the period 1992-1995, an important number of the Consortium's and the subcontractors' assets had been requisitioned by the Iraqi authorities".

35. More than half of the total claimed amount of USD 3,311,645 is claimed by the Consortium on behalf of its two sub-contractors, Instalexport and CCIC.

36. The Consortium asserts that the arbitration award included compensation in the amount of USD 1,039,170 for the loss of the use of the assets which the Consortium was forced to abandon at the project site. In the calculation of its claim before the Commission for the loss of tangible property, the Consortium has deducted this amount.

2. Analysis and valuation

37. The Panel finds that the Consortium provided sufficient evidence, in relation to most of the items claimed, to prove: (a) that it, or Instalexport or CCIC, owned the assets; and (b) that they were located at the STTP project site at the time of Iraq's invasion and occupation of Kuwait.

38. However, the Panel finds that the Consortium failed to provide sufficient evidence in relation to the date or cause of the loss. The documentation submitted in support of the claim indicates that at least some of the assets used on the STTP project were confiscated by the Iraqi authorities in 1992 and that other assets were confiscated as late as 1995.

3. Recommendation

39. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait, as set out in paragraph 146 of the Summary, the Panel recommends no compensation for loss of tangible property.

D. Mitigation expenses

40. The Consortium seeks compensation in the total amount of USD 3,581,580 for "costs to reduce the amount of the claim". The costs

comprise legal fees incurred in respect of the arbitration proceedings before the ICC (USD 2,645,533), transportation expenses that the Consortium agreed to pay APICORP in order to obtain payment under the arbitration award (USD 685,621), and storage and insurance costs that the Consortium agreed to pay APICORP in order to obtain payment under the arbitration award (USD 250,426).

41. The Consortium asserts that had the legal fees, transportation expenses, and storage and insurance costs not been incurred, it would not have obtained payment under the arbitration award, and the amount of the award could have formed part of its claim before the Commission.

42. The Panel finds that the legal fees, transportation expenses, and storage and insurance costs were not incurred as a direct result of Iraq's invasion and occupation of Kuwait. The Consortium elected to seek recovery of its losses on the STTP project before the ICC under the arbitration provision of the STTP project. The expenses of this process are an adjunct of this election, and not of Iraq's invasion and occupation of Kuwait.

43. The Panel recommends no compensation for mitigation expenses.

E. Summary of recommended compensation for the Consortium

44. Based on its findings regarding the Consortium's claim, the Panel recommends no compensation.

III. THE CLAIM OF SISSA CONSTRUCTION AND MANAGEMENT CORPORATION

45. Sissa Construction and Management Corporation ("Sissa") is a construction company incorporated in Canada. On 12 November 1990, Sissa entered into a contract with Iran Toseeh Company ("Iran Toseeh"), an Iranian corporation, for the development of Kish Island, in the Persian Gulf. The turnkey project involved the construction, equipment and furnishing of a modern luxury hotel, and a residential and shopping complex with associated public amenities on Kish Island.

46. The Kish Island Project was allegedly "cancelled" in October 1991 before any construction work had commenced "due to the invasion of Kuwait and air and water pollution of the area". The cancellation took place after Sissa had performed some initial design and mobilisation work on the project.

47. Sissa seeks compensation in the total amount of USD 159,718,942 for loss of profits and "other expenses" in connection with the Kish Island Project. Sissa also filed an alternative claim in the amount of USD 30,588,534 for unpaid contract amounts, in the event its claim for loss of profits and "other expenses" is unsuccessful.

A. Loss of profits

1. Facts and contentions

48. Sissa seeks compensation in the amount of USD 158,723,088 for loss of profits in connection with the Kish Island Project.

49. Under the terms of the contract for the development of Kish Island, Sissa was to "provide financing for the project, with the guarantee for repayment of Iran Toseeh and co-guarantee of Bank Meli Iran" as well as construction systems called "Multi-Fold Systems".

50. Payment under the contract was to be made in monthly instalments based on progress reports confirmed by Iran Toseeh's consulting engineer.

51. Sissa states that it commenced work on the Kish Island Project immediately after signing the contract. By 15 January 1991, Sissa had completed all designs, negotiated the funding of the project and completed negotiations with sub-contractors. Sissa states that, after 17 January 1991, the project was delayed "for months". In October 1991, Sissa was informed that the guarantees provided by Iran Toseeh for the project had been cancelled.

52. Sissa calculates its claim for loss of profits as ten per cent of the total "capital cost" for the Kish Island Project, which the contract estimated at USD 1,587,230,887. The contract provided that Sissa was to be compensated for its services in the amount of 2.5 per cent of the total "capital cost" of the project for each of the following items: (a)

construction supervision and management; (b) construction systems (multifold) and training; (c) architectural and engineering fee; and (d) procurement fee.

2. Analysis and valuation

53. In support of its claim, Sissa provided a feasibility report for the Kish Island Project as well as site plans and diagrams, photographs of models, target costings, design bases and assumptions and a time schedule. The Panel finds that the evidence provided by Sissa is not sufficient to show that the contract would have been profitable as a whole. Further, the Panel finds that Sissa's fees under the contract were payable as a percentage of "capital costs" that would have increased progressively as the development of Kish Island progressed. The fees would, therefore, have related to the progress of work under the contract and would not have been recovered on the lump sum basis stated by Sissa.

54. The Panel finds that Sissa failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

3. Recommendation

55. The Panel recommends no compensation for loss of profits.

B. "Other expenses"

56. Sissa seeks compensation in the amount of USD 995,854 for "other expenses" allegedly incurred in connection with the Kish Island Project. Sissa provided no information about the nature of its claim, apart from stating that it had been calculated "from billings that have been received as well as expenses of all travels, lodging, telecommunications, etc."

57. The Panel finds that Sissa failed to explain the nature of its losses and how they were directly caused by Iraq's invasion and occupation of Kuwait. Further, Sissa did not provide any evidence in support of its losses.

58. The Panel recommends no compensation for "other expenses".

C. Contract losses

59. Sissa claims for unpaid contract amounts. The claim is expressed as an alternative claim in the event that its claims for loss of profits and "other expenses" are unsuccessful. Sissa states that it is "willing to settle for the amount of USD 30,588,534, which will compensate for the funds spent up to date".

60. Iran Toseeh agreed to make available USD 15,000,000 for the mobilisation of the Kish Island Project upon the execution of the contract

and a further USD 25,000,000 "for down payment on equipments, furnishings and as start up funds for the construction of the warehouses".

61. Sissa alleges that it did not receive the downpayment of USD 40,000,000, as the cancellation of the contract intervened before this amount was paid. Further, Sissa "had employed independent contractors and had completed all architectural and engineering part of the Kish Island Project, and was obliged to pay USD 30,588,534 out of corporate funds" to architects and engineers.

62. Despite a specific request by the secretariat to do so, Sissa provided no evidence that Iran Toseeh accepted Sissa's claim for unpaid contractual amounts. Further, Sissa did not provide evidence in the form of agreements, orders or invoices with the architects and engineers. It provided no evidence that the payments were actually made.

63. The Panel finds that Sissa did not provide sufficient evidence in support of its losses.

64. The Panel recommends no compensation for contract losses.

D. Summary of recommended compensation for Sissa

65. Based on its findings regarding Sissa's claim, the Panel recommends no compensation.

IV. THE CLAIM OF ALEXANDRIA SHIPYARD COMPANY

66. Alexandria Shipyard Co. ("Alexandria"), a company existing under Egyptian law, is involved in the business of building and repairing maritime vessels. At the time of Iraq's invasion of Kuwait, Alexandria was undertaking repair work on the Iraqi commercial fleet for the Public Establishment for Maritime Transport. The work was being carried out pursuant to a protocol agreement for technical co-operation dated 20 November 1988.

67. Alexandria seeks compensation in the total amount of USD 15,356,626 for loss of profits, bank charges and interest. The interest element is in the amount of USD 6,029,131. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Alexandria's claim for interest.

68. In its original claim submission, Alexandria also sought compensation in the amount of USD 654,510 for contract losses (unpaid invoices for repair of ships and unpaid mooring fees). Alexandria later withdrew its claim for this loss item, stating that it had been able to obtain payment from the Iraqi employer of the amounts owing to it.

A. Loss of profits

1. Facts and contentions

69. Alexandria seeks compensation in the amount of USD 8,534,851 (DEM 13,000,000) for loss of profits. The claim is for the total profit that Alexandria expected to make under two contracts for the building and supply of ships (the "Ship-building Contracts"). Alexandria entered into the Ship-building Contracts with Hansa Bergen mbH & Co. ("Hansa Bergen"), a German marine transport company, on 30 August 1991. Alexandria estimates its lost profits under the Ship-building Contracts to be DEM 13,000,000.

70. The Ship-building Contracts provided for the building and supply of two 11,000 ton ships (vessels N14 and N15). The value of each contract was DEM 34.3 million. The ships were to be delivered within 21 months of the respective dates of entry into effect of the contracts.

71. On 29 August 1991, Alexandria entered into a contract with MPC Muenchmeyer Petersen GmbH & Co. KG ("Muenchmeyer"), a Hamburg-based shipping supplier, for the supply of components and equipment for the two ships (the "Supply Contract"). The Supply Contract took the form of Amendment No. 1 to a Technical Services Agreement between Alexandria and Muenchmeyer dated 31 January 1991. Under the Supply Contract, the value of the equipment to be supplied for each ship was DEM 27.8 million.

72. Alexandria states that, "for reasons in relation [to] the security of the region and other economic reasons, the contract for building and supplying both ships has been cancelled ...". Alexandria states that it

"did not execute the shipbuilding contract ... as the owner considered Middle East as a war area".

73. As a consequence of Hansa Bergen cancelling the Ship-building Contracts, Alexandria cancelled the Supply Contract.

74. Alexandria calculated its claim for loss of profits as the difference between the total value of the Ship-building Contracts (DEM 68.6 million) and the total value of the components and equipment to be supplied under the Supply Contract (DEM 55.6 million).

2. Analysis and valuation

75. In support of its claim, Alexandria provided copies of its planned budgets for the fiscal years 1991/92 and 1992/93. However, the Panel finds that the planned budgets do not constitute sufficient evidence that the Ship-building Contracts would have been profitable as a whole. Accordingly, the Panel finds that Alexandria failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary.

76. Further, given that the contracts were signed in late August 1991 (i.e., 6 months after the liberation of Kuwait), the Panel finds that their cancellation was not a direct result of Iraq's invasion and occupation of Kuwait. It follows that the losses arising out of the cancellation of the contracts were not a direct result of the invasion and occupation of Kuwait.

3. Recommendation

77. The Panel recommends no compensation for loss of profits.

B. Bank charges

1. Facts and contentions

78. Alexandria seeks compensation in the amount of USD 792,644 (2,623,652 Egyptian pounds (EGP)) for bank charges allegedly incurred in connection with the opening of two letters of credit with the Bank of New York, Frankfurt. The letters of credit were issued to the order of Muenchmeyer.

79. Under the terms of the Supply Contract, 67.88 per cent of the contract price was to be paid under an irrevocable letter of credit to be confirmed by a first class German bank. Twelve months after the date the Technical Services Agreement entered into effect, the letter of credit was to be increased by Muenchmeyer by a further 20 per cent.

80. Alexandria states that the documentary credits were cancelled upon the cancellation of the Ship-building Contracts, and "therefore, the company had to incur bank charges and commissions without consideration". Alexandria states that it incurred bank charges in the amount of EGP

2,623,652 in connection with the opening of the letters of credit. Alexandria converted this amount to United States dollars using the exchange rate EGP 3.31 to USD 1.

81. The charges include, "mail and telex charges", "L/C opening commission", "extension commission", "expenses for amending L/C" and "documentary credit increase commission".

82. Alexandria did not provide copies of the letters of credit. However, it did provide evidence that the letters of credit in the amount of DEM 27.8 million each were opened between 3 and 11 June 1991.

2. Analysis and valuation

83. The Panel finds that Alexandria failed to explain the direct link between the cancellation of the Ship-building Contracts, the incurring of the bank charges and Iraq's invasion and occupation of Kuwait. The Ship-building Contracts and the Supply Contract were entered into in late August 1991 (i.e., six months after the liberation of Kuwait). The Panel finds that the cancellation of the Ship-building Contracts and the related bank charges in connection with the letters of credit were not a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

84. The Panel recommends no compensation for bank charges.

C. Summary of recommended compensation for Alexandria

85. Based on its findings regarding Alexandria's claim, the Panel recommends no compensation.

V. THE CLAIM OF MISR CONCRETE DEVELOPMENT COMPANY

86. Misr Concrete Development Company ("Misr") is a construction company existing under Egyptian law. Prior to Iraq's invasion and occupation of Kuwait, Misr had been operating on construction projects in Iraq for over 20 years. At the time of Iraq's invasion of Kuwait, Misr was undertaking the construction of two Egyptian diplomatic mission buildings (the Chancery and the Ambassador's residence) in Baghdad (the "Embassy Project"). The work was being carried out pursuant to a contract with the Foreign Ministry of Egypt. Misr states that work on the Embassy Project stopped after 2 August 1990.

87. Misr seeks compensation in the total amount of USD 24,864,614 for loss of profits, loss of tangible property and financial losses.

A. Loss of profits

1. Facts and contentions

88. Misr seeks compensation in the amount of USD 3,200,000 (IQD 1,000,000) for loss of profits in relation to the Embassy Project. Misr states that Iraq's invasion and occupation of Kuwait rendered impossible the execution of the Embassy Project.

89. The contract between Misr and the Foreign Ministry of Egypt was signed by the parties on 5 March 1990. The total value of the contract was "estimated" by the parties to be IQD 5,000,000. The final costs were to be determined by a management committee appointed to the project. The works were to be completed within a period of 30 months from the date of fulfilment of the conditions precedent specified in the contract.

90. On 30 June 1990, the Egyptian Embassy in Baghdad deposited the advance payment in the amount of IQD 250,000 in Misr's bank account with the Rafidain Bank, Erkhita branch. Misr states that the advance payment "was spent on performing work relative to site preparation as well as on salary and accommodation of employees both in headquarters and the branch".

91. Upon fulfilment of the conditions precedent, Misr took delivery of the site and commenced mobilisation operations on the project.

92. By the end of July 1990, Misr had purchased equipment locally in Iraq and arranged for technicians, workers and equipment to leave Egypt for Iraq.

93. Misr states that, after Iraq broke off diplomatic relations with Egypt, "most Egyptians working in Iraq had to leave the country in chaotic and threatening circumstances". As a result, the project manager was requested to close Misr's office and to evacuate all Egyptian workers. Work on the Embassy Project was suspended, and on 11 August 1990, the workers left Baghdad for Aqaba.

94. Misr "fully expected to realise a profit margin of 20 per cent on the contract price, i.e. a profit of IQD 1,000,000". Misr converted its asserted losses using the exchange rate USD 1.00 to IQD 3.20 to arrive at a total claimed amount for loss of profits of USD 3,200,000.

2. Analysis and valuation

95. In support of its claim, Misr provided copies of its annual budget for the 1989 financial year. Misr stated that its Baghdad branch office accounts for previous years had been left behind in Iraq. The Panel considers that the annual budget for 1989 is insufficient to establish loss of profits on the Embassy Project. Misr failed to demonstrate that the contract would have been profitable as a whole. Accordingly, the Panel finds that Misr failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary.

96. Further, the Panel finds that Misr failed to make allowance in its claim for the advance payment of IQD 250,000. Although Misr listed the items on which the advance payment was spent, it did not provide a breakdown of the amounts spent in respect of each item and provided no documentary back-up in support of the amounts spent.

3. Recommendation

97. The Panel recommends no compensation for loss of profits.

B. Loss of tangible property

98. Misr seeks compensation in the amount of USD 100,000 for loss of tangible property. The claim is for tangible property left behind at two apartments in Baghdad and at Misr's Baghdad branch office after its personnel were evacuated from Iraq. The abandoned items include electrical appliances, furniture, furnishings, office equipment and a vehicle.

99. Misr states that Iraq's invasion and occupation of Kuwait "triggered a chain of events in Iraq which forced Misr's representatives to leave Iraq with the branch's property unattended". Between March 1992 and June 1994, Misr attempted to send its representatives back to Iraq to check on its property, however, the Iraqi authorities denied them the necessary entry visas. Misr states that it "did not give up and tried through its lawyer in Baghdad to reverse the decision but to no avail, until the Military Industrialisation Authority [of Iraq] confiscated company property".

100. The Panel finds that Misr did not provide sufficient evidence of its ownership of the lost items and their presence in Iraq in August 1990. Furthermore, applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait, as set out in paragraph 146 of the Summary, the Panel is unable to recommend compensation.

101. The Panel recommends no compensation for loss of tangible property.

C. Financial losses

102. Misr seeks compensation in the amount of USD 21,564,614 for financial losses. The claim is for unrecovered costs incurred on the Embassy Project (USD 800,000; amount of loss in original currency: IQD 250,000); cash in bank account (USD 14,307,017; amount of loss in original currency: IQD 4,470,943); cash and receivables (USD 19,439; amount of loss in original currency: IQD 6,075) and interest (USD 6,438,158).

103. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Misr's claim for interest.

(a) Unrecovered costs incurred on the Embassy Project

104. Misr seeks compensation in the amount of IQD 250,000 for unrecovered costs incurred on the Embassy Project. Misr describes this loss item as a claim for "down payment in bank account", as the amounts expended by Misr on the Embassy Project were withdrawn from the amount paid to it as a down payment (advance payment) by the Egyptian embassy in Baghdad. The contract required the Foreign Ministry of Egypt to make a down payment of five per cent of the estimated costs for the works (IQD 5,000,000) against a letter of guarantee to be given by Misr. Documents submitted with the claim show that the down payment was paid to Misr.

105. Misr states that, during the preliminary stages of the Embassy Project, "it incurred expenses which consumed the whole of the down payment".

106. The down payment "was spent on performing work relative to site preparation as well as on salary and accommodation of employees both in headquarters and the branch". Misr states that the following amounts were paid: (a) IQD 43,000 for "preliminary works connected with the contract"; and (b) USD 12,000 to an Iraqi firm specialising in soil investigation and bore-testing. A further unstated amount was used by Misr to purchase locally "some urgently needed equipment and caravans". However, Misr did not provide evidence in the form of receipts or invoices that these amounts were paid.

107. The Panel finds that the down payment received by Misr was an advance payment. Applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the Panel finds that claimants must account for those payments in reduction of their claims. Misr failed to account for the advance payment in reduction of its claim. Accordingly, any amounts of compensation recommended by the Panel must be reduced by the amount of the advance payment.

108. The Panel also finds that Misr provided no evidence that it incurred the expenses in the start-up of the Embassy Project. Further, Misr did not

demonstrate that the amounts were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Cash in bank account

109. Misr states that it had cash in the amount of IQD 4,470,943 deposited with the Rafidain Bank, Baghdad branch, and that this amount was frozen by the Iraqi authorities after Iraq's invasion of Kuwait. It further states that, in April 1992, the amount was sequestrated by the Iraqi authorities pursuant to a decree of the Council of Ministers of Iraq.

110. The cash balance held with the Rafidain Bank, Baghdad branch, comprised Misr's profits earned during more than 20 years of contracting business in Iraq. Misr seeks compensation for the confiscated funds (IQD 4,470,943), which it states are equivalent to USD 14,307,017.

111. Applying the approach taken with respect to loss of funds in bank accounts in Iraq set out in paragraphs 135 to 139 of the Summary, the Panel recommends no compensation.

(c) Cash and receivables

112. Misr seeks compensation for cash and receivables left behind at its branch office in Baghdad. The amount of the claim is USD 19,439 (IQD 6,075) (amended from the original claim in the amount of USD 53,088 (IQD 16,590)).

113. Applying the approach taken with respect to loss of petty cash in Iraq set out in paragraph 140 of the Summary, the Panel recommends no compensation for lost cash and receivables.

Recommendation

114. The Panel recommends no compensation for financial losses.

D. Summary recommended compensation for Misr

115. Based on its findings regarding Misr's claim, the Panel recommends no compensation.

VI. THE CLAIM OF TECHNIP S.A.

116. Technip S.A. ("Technip") is a corporation existing under the laws of France.

117. Technip seeks compensation in the total amount of USD 44,542,630 (converted by Technip to 233,914,564 French francs (FRF)) for contract losses, losses related to a business transaction or course of dealing, loss of profits, loss of tangible property, payment or relief to others, and financial losses. The claims are for losses arising out of two projects in Iraq - the Zubair Project and the Baiji Project.

118. On 30 July 1984, Technip entered into a contract with the State Company for Oil Projects in Iraq ("SCOP") for the design and construction of a lubricant production plant in Baiji (the "Baiji Contract"). This contract was completed on 11 October 1989, but Technip asserts that SCOP has not yet paid certain retention monies.

119. On 29 June 1989 it signed an Addendum to a contract entered into on 31 August 1983 with SCOP for the remodelling of LPG/NLG units in Zubair (the "Zubair Addendum"). Technip asserts that the Zubair Addendum was suspended due to Iraq's invasion and occupation of Kuwait.

A. Contract losses

(a) Baiji Contract

120. Technip seeks compensation in the amount of USD 830,000 for contract losses on the Baiji Contract.

121. In the "E" claim form, Technip characterised this loss element as "other", but the Panel finds that it is more accurately described as contract losses.

122. Technip asserts that SCOP did not pay an amount of USD 2,360,000, "representing an instalment equal to 2 per cent of the price of the contract attached to final acceptance", due to Iraq's invasion and occupation of Kuwait. However, because Technip obtained a "partial reimbursement" of USD 1,530,000 from Compagnie Française d'Assurance pour le Commerce Extérieur ("COFACE"), it limits its claim to USD 830,000.

123. The Panel finds that under the terms of the Baiji contract and according to the date of the final acceptance certificate the amount of USD 2,360,000 became due and payable prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

(b) Zubair Addendum

124. Technip seeks compensation in the amount of USD 7,511,411 (FRF 33,939,858 and IQD 322,448) for contract losses on the Zubair Addendum.

125. Technip asserts that the Zubair Addendum was in the "ultimate completion stage" when Iraq invaded Kuwait and the staff of both Technip and its subcontractors were forced to "gather in Baghdad". It asserts that SCOP has not paid the invoices described in table 1, infra, due to Iraq's invasion and occupation of Kuwait.

Table 1. Technip's claim for contract losses on the Zubair Addendum

Date of invoice	Nature of work	Amount of invoice
29 March 1990	For performance bond/retention money guarantee	FRF 137,643
18 August 1990	For 10 per cent upon beginning of test run on the second LPG unit	FRF 9,700,000
17 October 1990	For "excess man/months from September 13 to October 15, 1990"	FRF 7,343,381 IQD 121,550
11 December 1990	For "excess man x months above the Addendum"	FRF 3,178,834 IQD 59 778
31 December 1990	For "final payment of the June 29, 1989 Addendum as per its Article 7.4"	FRF 13,580,000 IQD 141,120
Total		FRF 33,939,858 IQD 322,448

126. The Panel finds that SCOP is an agency of the State of Iraq.

127. The Panel finds that the invoice in respect of "performance bond/retention money guarantee" (invoice dated 29 March 1990) became due and payable prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

128. The Panel finds that the invoices dated 18 August 1990 and 31 December 1990 relate to work performed after 2 May 1990. The Panel is satisfied that Technip is entitled to payment of the invoices under

Articles 5 and 7.4 of the Zubair Addendum. The Panel recommends compensation in the amounts claimed.

129. The invoices dated 17 October 1990 and 11 December 1990 relate to "excess man x months". Article 4.3 of the Addendum between Technip and SCOP provides that Technip is entitled to payment for "excess man x months" only where the excess man-months are not due to reasons attributable to Technip. Technip provided no evidence that this was the case. Accordingly, the Panel is unable to recommend compensation.

Recommendation

130. The Panel recommends compensation in the amount of USD 4,894,815 for contract losses.

B. Business transaction or course of dealing

131. Technip seeks compensation in the amount of USD 1,292,840 (FRF 6,777,066) for losses related to a business transaction or course of dealing. It asserts that at the time of Iraq's invasion and occupation of Kuwait it had incurred costs drawing up the "technical and commercial proposals" for one contract which had been signed, and for another contract in respect of which it had obtained a letter of intent. Because of Iraq's invasion and occupation of Kuwait, these contracts were never performed, and the costs never recovered.

132. Technip describes the two contracts as follows:

> "- LLDPE unit (Linear Low Density Polyethylene) complex No. 2 Baghdad, client: TECHCORPS, signed on April 13, 1989.
>
> - AL KAIM fertilizers units, client: Ministry of Industry, letter of intent dated March 2, 1989."

133. The Panel finds that the commercial proposal costs were not directly caused by Iraq's invasion and occupation of Kuwait. The cost of work undertaken for the submission of tenders is a normal cost to the contractor who takes a risk of not obtaining the contract. The Panel further notes that at least part of the costs were incurred prior to 2 May 1990 and are for that reason outside the jurisdiction of the Commission.

134. The Panel recommends no compensation for business transaction or course of dealing.

C. Loss of profits

135. Technip seeks compensation in the amount of USD 31,142,694 (FRF 163,250,000) for loss of profits on the two contracts that are the subject of the above claim for losses related to a business transaction or course of dealing (see paragraphs 131 to 134, *supra*).

136. In the "E" claim form, Technip characterised this loss element as "losses related to a business transaction or course of dealing", but the Panel finds it is more accurately described as loss of profits.

137. Technip asserts that the two contracts were expected to "generate for Technip a net profit margin of about 5 per cent on the basis of the profit previously made by Technip on similar jobs". The loss of profits is therefore calculated as five per cent of the total value of the contracts, i.e.:

> "LLDPE complex no. 2: FRF 430,000,000 * 5 per cent = 21,500,000
>
> fertilizers Al Kaim: FRF 2,835,000,000 * 5 per cent = 141,750,000."

138. In support of its claim, Technip provided a signed contract in relation to the LLDPE complex, a letter of intent in relation to the Al-Qaim fertilizers project and internal cost accounting records showing the expenses incurred in respect of the two projects in the period 20 February 1989 to 11 June 1991. However, Technip provided no evidence that it generated a profit margin of five per cent on previous projects. The Panel finds that the evidence submitted by Technip does not constitute sufficient evidence that the projects would have been profitable as a whole.

139. Applying the approach taken with respect to loss of profits for future projects set out in paragraphs 132 to 134 of the Summary, the Panel recommends no compensation for loss of profits.

D. Loss of tangible property

140. Technip seeks compensation in the amount of USD 61,309 (IQD 19,067) for loss of tangible property. Its only explanation of its claim is that "further to repatriation of our personnel held as hostages, our company had to abandon in Iraq the furniture and office equipment assigned to our office in Baghdad".

141. The Panel finds that Technip did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Iraq on 2 August 1990.

142. The Panel recommends no compensation for loss of tangible property.

E. Payment or relief to others

1. Facts and contentions

143. Technip seeks compensation in the total amount of USD 1,154,752 (FRF 6,053,210) for payment or relief to others, including salaries and welfare costs (USD 99,370; FRF 520,895); accommodation and living expenses in Baghdad and on site (USD 804,552; IQD 253,911; converted by Technip to FRF 4,217,462); and personnel secondment costs invoiced by subcontractors (USD 250,830; FRF 1,314,853).

144. Technip asserts that at the time of Iraq's invasion and occupation of Kuwait, it had four employees in Iraq and used the services of 40 employees of non-Iraqi subcontractors. It asserts that all of these persons were held hostage between 2 August and 29 October 1990 and that it continued to bear the cost of salaries, welfare costs, and accommodation and living expenses during this time.

2. Analysis and valuation

145. The Panel finds that the salaries allegedly paid by Technip to its four employees are prima facie compensable as salary paid for unproductive labour. However, Technip has only provided sufficient evidence to substantiate its loss in relation to one of its employees. Technip provided copies of employment contracts and pay-roll records in relation to all four employees. However, only in respect of one employee did it provide an attestation from the French Ministry of Foreign Affairs proving that he was detained in Iraq. The Panel recommends compensation in the amount of FRF 129,496 for salaries and welfare costs.

146. The Panel finds that Technip did not provide sufficient evidence to substantiate its claim for accommodation and living expenses in respect of all 44 persons the subject of the claim. However, the Panel is satisfied that one employee was detained in Iraq. Further, although there are difficulties with the petty cash and bank records submitted in support of the claim for the accommodation and living expenses in respect of the individual concerned, there is sufficient evidence that the expenses were incurred, and the Panel assesses the loss at USD 2,000 (FRF 10,484).

147. The Panel finds that Technip did not provide sufficient evidence to substantiate its claim for personnel secondment costs. It submitted invoices and payment vouchers, however, it did not demonstrate that the personnel were detained in Iraq or that it incurred a loss directly caused by Iraq's invasion and occupation of Kuwait.

3. Recommendation

148. The Panel recommends compensation in the amount of USD 26,704 (FRF 139,980) for payment or relief to others.

F. Financial losses

149. Technip seeks compensation in the amount of USD 2,549,624 (FRF 13,365,128) for financial losses, including (a) frozen bank accounts/petty cash (USD 677,556; IQD 213,832; converted by Technip to FRF 3,551,749) and (b) "call up for guarantee (Baiji Contract)" (USD 1,872,068; FRF 9,813,379).

(a) Frozen bank accounts/petty cash

150. Technip asserts that "further to invasion of Kuwait by Iraq and to the measures taken by Iraqi authorities, our company has to abandon its residual monetary assets there". It seeks compensation in respect of amounts held in three bank accounts with the Rafidain Bank, Iraq, and petty cash kept at the Zubair and Baiji Project sites.

151. Applying the approach taken with respect to loss of funds in bank accounts and loss of petty cash in Iraq, set out in paragraphs 135 to 130 of the Summary, the Panel recommends no compensation for loss of funds.

(b) Call up for guarantee on Baiji Contract

152. Technip asserts that in respect of the Baiji Contract (see paragraphs 120 to 123, supra), COFACE granted the financing banks a 100 per cent guarantee in exchange for a countersecurity by Technip in the amount of two per cent of the "export customer credit utilizations, i.e. USD 1,530,000". When the Iraqi borrower became insolvent, Technip called on its guarantee to the extent of 2 per cent of each payment made by COFACE. It seeks compensation in respect of the guarantees which COFACE had called up as at 31 July 1993 (FRF 8,467,301) and the guarantees which, as at 31 July 1993, it expected COFACE to call up in the future (FRF 1,346,078).

153. The Panel finds that Technip failed to prove that the stated losses were directly caused by Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for "call up for guarantee on Baiji Contract".

G. Summary of recommended compensation for Technip

154. Based on its findings regarding Technip's claim, the Panel recommends compensation in the amount of USD 4,921,519. The Panel finds the date of loss to be 2 August 1990.

VII. THE CLAIM OF ENTERPRISE MULLER FRERES - TRAVAUX PUBLICS S.A.

155. Enterprise Muller Freres - Travaux Publics ("Muller Freres"), a corporation existing under French law, seeks compensation in the amount of USD 1,552,629 (406,975,217 CFA Franc bceac (XOF)) for unpaid contract amounts. The amounts claimed relate to work performed on the construction of a road between Zinder and Agadez in Niger.

156. The claim contains a number of formal deficiencies. The claim was not accompanied by an "E" claim form. The claim is entirely in French with no English translation. In addition, Muller Freres failed to provide a Statement of Claim and documents in English evidencing the name, address and place of its incorporation.

157. On 30 September 1998, Muller Freres was sent an article 15 notification requesting it to remedy such deficiencies on or before 30 March 1999. Muller Freres failed to respond to the notification. On 22 April 1999, Muller Freres was sent a reminder article 15 notification requesting it to remedy the deficiencies on or before 23 June 1999. Once again, Muller Freres failed to respond to the notification.

158. The Panel considered such information and documentation as had been submitted by Muller Freres and found it to be insufficient to support any of its claims. Therefore, the Panel finds that Muller Freres both failed to fulfil certain formal requirements and to submit sufficient information and documentation to support the asserted losses.

159. Based on its findings regarding Muller Freres' claim, the Panel recommends no compensation.

VIII. THE CLAIM OF ABB SCHALTANLAGEN GMBH

160. ABB Schaltanlagen GmbH ("ABB Schaltanlagen") is a German company involved in the development, manufacture and marketing of switchgear and related equipment and products.

161. ABB Schaltanlagen seeks compensation in the total amount of USD 16,635,422 (61,068,635 UAE dirhams (AED)) for contract losses and interest in connection with the Al Ain International Airport Project in Abu Dhabi.

162. The interest element is in the amount of USD 3,445,790 (AED 12,649,499). For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to ABB Schaltanlagen's claim for interest.

A. Contract losses

1. Facts and contentions

163. ABB Schaltanlagen seeks compensation in the amount of USD 13,189,632 (AED 48,419,136) for contract losses, including "acceleration" (AED 1,110,421), "loss of productivity" (AED 4,621,594), "costs resulting from prolongation" (AED 26,842,380), "idle time" (AED 7,887,994), "demobilisation/remobilisation" (AED 972,874), "additional management resources" (AED 1,870,122), "damage to works" (AED 386,320) and "additional increases in costs on contract works" (AED 4,727,431).

164. On 8 August 1988, Brown Boveri & Cie Aktiengesellschaft ("Brown Boveri"), the legal predecessor to the parent company of ABB Schaltanlagen, Asea Brown Boveri AG, and its joint venture partner, Rapco Buildings ("Rapco"), a company existing under the laws of Abu Dhabi, United Arab Emirates, entered into a contract with the Abu Dhabi Public Works Department (the "Public Works Department"). The contract was for the construction and maintenance of power supplies and aviation ground lighting for the Al Ain International Airport. The total value of the contract was AED 135,822,739. The project site was handed over to the joint venture, and work commenced, on 22 August 1988. The contract provided for a 30 month period for the completion of the works commencing on the date of handover of the site. The completion date was, therefore, expected to be 22 February 1991.

165. The Panel notes that the party to the joint venture agreement with Rapco and to the contract with the Public Works Department was Brown Boveri. ABB Schaltanlagen provided a confirmation that Brown Boveri changed its name to Asea Brown Boveri AG on 8 June 1988 and stated that the contract with the Public Works Department was "passed on to a wholly owned subsidiary company, ABB Schaltanlagen GmbH." However, ABB Schaltanlagen did not provide evidence of a formal assignment of the claim from Asea Brown Boveri AG to ABB Schaltanlagen GmbH.

166. ABB Schaltanlagen states that the progress on the project was severely delayed as a result of Iraq's invasion and occupation of Kuwait. According to ABB Schaltanlagen, the Public Works Department allowed the project site to be occupied by "United Nations" and United States military forces between 8 August 1990 and 22 May 1991. ABB Schaltanlagen states: "During this period, severe restrictions were placed by the military on the activities of ABB Schaltanlagen and all other contractors employed on the site".

167. ABB Schaltanlagen states that it had to "partially demobilise and remobilise". In addition, even after the military restrictions were lifted, it was affected by delays affecting "other trades", presumably suppliers and sub-contractors.

168. ABB Schaltanlagen provided no statement of claim. The only documents provided which describe the nature of its claim are the documents entitled "Further written notice of delays and application for extension of time by the joint venture" dated February, June and August 1991. These are the written submissions made by the joint venture to the Public Works Department outlining the joint venture's claims for compensation by the Public Works Department and its requests for extension of the completion date of the project.

169. In its response to the article 34 notification, ABB Schaltanlagen stated that, after its original claim submission was filed, it received payment in the amount of AED 17,612,848 from the Public Works Department. However, in its response, it did not specify which items included in its claim were accepted by the Public Works Department and which items were rejected.

170. On 17 November 1999, the Panel issued a procedural order in which it requested ABB Schaltanlagen to explain how the amount of AED 17,612,848 was arrived at and which of the items included in ABB Schaltanlagen's claim to the Public Works Department the amount covered. The Panel further requested ABB Schaltanlagen to provide a detailed breakdown of the amount paid by the Public Works Department.

171. In its response to the additional questions raised by the Panel, ABB Schaltanlagen provided copies of correspondence between itself and the Public Works Department and the project engineers as well as three reports dated from June to November 1992 made by the project engineers. The reports contain assessments of ABB Schaltanlagen's claim for reimbursement filed with the Public Works Department, and were prepared at the behest of the Public Works Department.

172. The engineers' final assessment of ABB Schaltanlagen's claim included in their report dated November 1992 was in the total amount of AED 14,336,403.

173. However, the correspondence provided confirms that ABB Schaltanlagen did not accept the amount recommended by the project engineers and entered into discussions with the Public Works Department after the engineers' final report was submitted.

174. ABB Schaltanlagen states that it "subsequently entered into negotiations with the client's representatives, which culminated in an increased assessment in the total sum of AED 17,612,848". The negotiations commenced in about June 1993. In June 1996, ABB Schaltanlagen signed a final discharge and settlement of all its outstanding claims. In signing that document, ABB Schaltanlagen agreed to accept the sum of AED 11,050,125 in final settlement of all its claims. The amount was calculated as follows:

Table 2. ABB Schaltanlagen's settlement with the Abu Dhabi Public Works Department

Item	Amount (AED)
Compensation for stoppage of work	17,612,848
Compensation for outstanding items in the final account	2,437,277
Deduction of the advance payment	(9,000,000)
Total	11,050,125

2. Analysis and valuation

175. Leaving aside the issue of the proper claimant to file the claim with the Commission, the Panel finds that the amounts claimed were included in the settlement reached between ABB Schaltanlagen and the Public Works Department. ABB Schaltanlagen signed a final discharge and settlement of all its outstanding claims against the Public Works Department. *Prima facie* once a claimant's claims are settled, no claim remains to be pursued. In that event it is necessary to review the filed material to ascertain if there is any basis which displaces the *prima facie* view. Absent such material, ABB Schaltanlagen has not established a loss and, therefore, the Panel is unable to recommend compensation.

3. Recommendation

176. The Panel recommends no compensation for contract losses.

B. Summary of recommended compensation for ABB Schaltanlagen

177. Based on its findings regarding ABB Schaltanlagen's claim, the Panel recommends no compensation.

IX. THE CLAIM OF THE IRBID DISTRICT ELECTRICITY COMPANY

178. The Irbid District Electricity Company ("IDEC") is a Government entity existing under the laws of Jordan. It seeks compensation in the total amount of USD 1,444,824 (950,694 Jordanian dinars (JOD)) for contract losses, losses related to a business transaction or course of dealing, and interest.

179. The interest element is in the amount of USD 430,912 (JOD 283,540). For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to IDEC's claim for interest.

A. Contract losses

1. Facts and contentions

180. IDEC seeks compensation in the amount of USD 611,100 (JOD 402,104) for contract losses, including (a) costs incurred because of the delay on a contract with Transelektro, a Hungarian company, for the supply of certain electrical equipment (the "Transelektro Contract") (JOD 250,120); and (b) costs incurred because of the delay on a contract with Electro-Mechanical & Communication Engineers ("ELMACO"), an Egyptian company, for the supply of transformers (the "ELMACO Contract") (JOD 151,984).

(a) Transelektro Contract

181. On 31 October 1989, IDEC entered into a contract with Transelektro for the supply of "a main substation designed to provide electricity to the Irbid Industrial Estate". IDEC asserts that "two of the main transformers" were supposed to arrive in Jordan in January 1991, but due to Iraq's invasion and occupation of Kuwait, did not arrive until 29 March 1992. IDEC did not provide any further explanation of the reasons for the delay.

182. IDEC asserts that the one-year delay caused an increase in the contract price from JOD 415,409 to JOD 574,829, resulting in a loss of JOD 159,420.

183. IDEC further asserts that labour and other costs associated with the Transelektro contract continued to be paid during the one-year delay, resulting in a loss of JOD 90,700.

(b) ELMACO Contract

184. On 18 March 1990, IDEC entered into a contract with ELMACO for the supply of 70 distribution transformers. The transformers were due to be supplied by September 1990 "at the latest". IDEC asserts that, due to Iraq's invasion and occupation of Kuwait, the equipment did not arrive in Jordan until September 1991. IDEC did not provide any further explanation of the reasons for the delay.

185. IDEC asserts that during the one-year delay, the value of the Jordanian dinar decreased significantly. As a result of this decrease, IDEC asserts that the contract price of USD 288,050 cost IDEC JOD 232,744 in September 1991, JOD 76,984 more than the amount it would have cost if there had been no delay.

186. IDEC further asserts that during the one-year delay, "in order to mitigate its damages, [it] decided to place an urgent order for 10 distribution transformers with another company, Matlec". It seeks compensation in the amount of JOD 75,000 for the cost of the transformers.

187. In its response to the article 34 notification, IDEC stated that it received four transformers and the amount of USD 8,108 as "a compensation for" the ELMACO contract.

2. Analysis and valuation

188. The Panel finds that IDEC did not provide sufficient evidence that the losses, allegedly incurred because of the delays on the Transelektro Contract and the ELMACO Contract, were directly caused by Iraq's invasion and occupation of Kuwait. The equipment was finally delivered in March 1992 for the Transelektro Contract, and in September 1991 for the ELMACO Contract. The Panel finds that such extended delays were not directly caused by Iraq's invasion and occupation of Kuwait.

189. Given that the delays on the Transelektro Contract and the ELMACO Contract were not directly caused by Iraq's invasion and occupation of Kuwait, it follows that the costs which IDEC asserts it incurred because of these delays were not directly caused by Iraq's invasion and occupation of Kuwait.

190. The Panel further finds that the alleged increases in the contract price of the Transelektro Contract and the ELMACO Contract, because of the fall of the Jordanian dinar, were not directly caused by Iraq's invasion and occupation of Kuwait. The fall of the Jordanian dinar was due to a combination of economic factors existing at that time.

191. In respect of the 10 transformers allegedly purchased because of the delay on the ELMACO Contract, the Panel further finds that IDEC did not provide sufficient evidence that it would not have purchased these transformers in any event, whether or not the transformers purchased from ELMACO had arrived on time.

192. The Panel finds that IDEC did not provide sufficient evidence in support of its assertions. In relation to the Transelektro Contract, it provided no evidence that the two transformers arrived late, that the contract price increased, or that the losses in respect of wages, cars, storage and transportation, were in fact incurred. In relation to the ELMACO contract, it provided no evidence that it paid the increased contract price.

3. Recommendation

193. The Panel recommends no compensation for contract losses.

B. Business transaction or course of dealing

1. Facts and contentions

194. IDEC seeks compensation in the amount of USD 402,812 (JOD 265,050) for losses related to a business transaction or course of dealing, including (a) decreased electricity revenues in the year beginning August 1990 (JOD 108,000); (b) overtime hours worked by IDEC's staff on an emergency basis during Iraq's invasion and occupation of Kuwait (JOD 101,250); and (c) losses resulting from a Government order for the reduction of street lighting (JOD 55,800).

2. Analysis and valuation

(a) Lost revenue

195. In August 1990, the Government of Jordan issued electricity conservation guidelines which ordered Jordanian electricity providers, including IDEC, to take certain steps to reduce electricity consumption. IDEC asserts that its estimated growth rate for 1991 was 9 per cent and the growth rate actually achieved by it was 5.26 per cent. IDEC asserts that its loss of anticipated growth rate of 3.74 per cent caused it to lose revenue in the amount of JOD 108,000.

196. The Panel finds that IDEC provided sufficient evidence to show that the Government of Jordan issued directives with a view to decreasing electricity consumption. However, the Panel finds that IDEC did not provide sufficient evidence to enable the Panel to establish the quantum of the claimed loss with reasonable certainty.

197. The documents provided by IDEC indicate that the growth rate for 1988 was 17 per cent, and the growth rate for 1989 was 5 per cent. IDEC provided no evidence to explain the deterioration of the growth rate in 1989, prior to Iraq's invasion and occupation of Kuwait. IDEC estimates that 12 gigawatt-hours ("GWh") of the total 14.2 GWh decline in growth rate in 1991 was due to Iraq's invasion and occupation of Kuwait. It did not provide evidence in support of this estimate. IDEC asserts that the profit per kilowatt-hours ("kWh") sold is JOD 0.009, based on an average sale price of JOD 0.030 per kWh less JOD 0.021 average cost. It did not provide detailed calculations to support these assertions.

(b) Overtime

198. IDEC asserts that "during the Gulf crisis, and due to the threats faced by Jordan from the Gulf War" the Government of Jordan ordered IDEC to employ ten engineers and 40 employees on an overtime basis for a period of

60 days. Twenty-five cars were also required for the 60 day period. IDEC does not describe the tasks performed by the engineers and employees during the 60 day period. It asserts that the cost of the engineers, employees and cars amounts to JOD 101,250.

199. The Panel finds that IDEC did not provide sufficient explanation about the nature of the overtime or the use of the cars to enable the Panel to determine whether the losses were directly caused by Iraq's invasion and occupation of Kuwait. Further, the Panel finds that IDEC did not provide sufficient evidence to support its assertions. The statement of claim calculates the loss on the basis of 10 engineers, 40 employees and 25 cars. However, the response to the article 34 notification amends this to two "main engineers", 14 "others", and 30 "other employees", without further explanation. The overtime charges do not correspond with the duty rosters provided by IDEC. The individual payroll records, despite being requested, have not been provided.

(c) Reduction of street lighting

200. IDEC states that the Government of Jordan, enforcing one of its electricity conservation measures, required IDEC to reduce street lighting for a period of six months. IDEC asserts that it thereby incurred a loss of JOD 55,800.

201. The Panel finds that IDEC did not substantiate its claim. IDEC provided a list of two engineers and eight employees indicating that they had an "overtime" entitlement for the period 15 January 1991 to 15 June 1991 totalling JOD 21,600. However, it did not explain how this amount related to the claimed amount of JOD 55,800. IDEC provided no evidence of the applicable rates of overtime, that the hours worked constitute "extra" work, or that the personnel were paid.

3. Recommendation

202. The Panel recommends no compensation for business transaction or course of dealing.

C. Summary of recommended compensation for IDEC

203. Based on its findings regarding IDEC's claim, the Panel recommends no compensation.

X. THE CLAIM OF THE JORDAN ELECTRIC POWER COMPANY

204. The Jordan Electric Power Company ("JEPCO") is a Government entity existing under the laws of Jordan. It seeks compensation in the total amount of USD 2,363,213 (JOD 1,554,994) for contract losses, losses related to a business transaction or course of dealing, and interest.

205. The interest element is in the amount of USD 835,958 (JOD 550,060). For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to JEPCO's claim for interest.

A. Contract losses

1. Facts and contentions

206. JEPCO seeks compensation in the amount of USD 543,775 (JOD 357,804) for contract losses, including (a) emergency expenditure on power cable purchased in October 1990 (JOD 343,621); and (b) the additional cost of procuring power cable in August 1992 (JOD 14,183).

207. JEPCO asserts that on 30 May 1990 the Power Cables Division of Felten & Guilleaume Energietechnik AG ("Felten") made a tender offer to supply 56 kilometres of "240 SQ. MM., 8.7/15KV, 3-core, XLPE - insulated, aluminium cable" to JEPCO at a total contract price of DEM 2,445,520. JEPCO accepted the tender offer on 20 September 1990. However, in a letter dated 9 October 1990 Felten rejected JEPCO's award of contract, advising that its board had passed a resolution that there be no deliveries to "the critical area", including Jordan.

(a) Emergency expenditure

208. On 1 October 1990, "in order to meet certain project completion deadlines", JEPCO purchased four kilometres of "screened 8,7/15 kv Alu. 1. 3 x 240 mm2 (sm)" cable from Hellenic Cables S.A. ("Hellenic") for a total price of USD 21,440 (JOD 14,183). It seeks compensation for this amount.

(b) Additional cost

209. JEPCO further asserts that in early 1992 it re-opened the tendering for the power cable to all of the original tender participants. On 4 August 1992, it awarded a contract to Alcatel Kabelmetal Electro GmbH ("Alcatel") for the supply of 54 kilometres of "240 SQ. MM. 8.7/15KV, 3-core XLPE insulated aluminium cable", and 18 kilometres of "240 SQ. MM. 8.7/15KV, 1-core XLPE insulated aluminium cable".

210. The total CIF (cost, insurance, freight) price under the contract with Alcatel was DEM 3,235,272. JEPCO seeks compensation for DEM 789,752, being the difference between the price under the contract with Felten and the price under the contract with Alcatel.

2. Analysis and valuation

(a) Emergency expenditure

211. The Panel finds that JEPCO did not provide sufficient evidence that the purchase of the four kilometres of cable in October 1990 was caused by Iraq's invasion and occupation of Kuwait. It provided no evidence that the four kilometres of cable was used on the same project for which the 56 kilometres had been ordered from Felten. It provided no evidence that the four kilometres of cable was delivered or paid for.

(b) Additional cost

212. The Panel finds that JEPCO did not provide sufficient evidence in support of its claim. JEPCO did not provide sufficient evidence that it concluded a contract with Felten in 1990. It provided a letter dated 20 September 1990 confirming "acceptance of part of your offer no. 3448 dated 30 May 1990", but it did not provide a copy of the tender offer. The Panel is unable to determine whether the letter of 20 September 1990 constitutes the acceptance of an offer, or a new offer that was rejected by Felten in its letter of 9 October 1990.

213. The Panel further finds that JEPCO's claim, in asserting an entitlement to the difference between the price under the contract with Felten and the price under the contract with Alcatel, does not explain the fact that the contract with Felten was for 56 kilometres of 3-core cable, and the contract with Alcatel was for a larger total quantity of cable, namely, 54 kilometres of 3-core cable, and 18 kilometres of 1-core cable.

214. The Panel further finds that JEPCO's calculation of the claimed amount does not take into account its statement in its response to the article 34 notification that it had received DEM 70,000 from Felten by forfeiting the bid bond enclosed in their offer of contract.

3. Recommendation

215. The Panel recommends no compensation for contract losses.

B. Business transaction or course of dealing

1. Facts and contentions

216. JEPCO seeks compensation in the amount of USD 983,480 (JOD 647,130) for decreased electricity revenues in the year beginning August 1990.

217. In August 1990 the Government of Jordan issued electricity conservation guidelines which ordered Jordanian electricity providers, including JEPCO, to take certain steps to reduce electricity consumption. JEPCO asserts that its estimated growth rate for the year beginning August 1990 was 5.9 per cent, however, due to decreased electricity consumption it was unable to obtain this. JEPCO asserts that had the 5.9 per cent growth

rate been met, its additional sales would have amounted to 53,000,000 kilowatt-hours ("kWh"), its profit on 1 kWh was 12.21 Jordanian fils, and therefore its lost revenue amounted to JOD 647,130.

2. Analysis and valuation

218. The Panel finds that JEPCO provided sufficient evidence to show that the Government of Jordan issued directives with a view to decreasing electricity consumption. However, while JEPCO provided a considerable amount of general documentation, the Panel finds that JEPCO did not provide sufficient evidence to enable the Panel to establish the quantum of the claimed loss with reasonable certainty.

219. The documents provided by JEPCO indicate that the growth rate for 1988 was 9.8 per cent, and the growth rate for 1989 was 4.5 per cent. JEPCO provided no evidence to explain the deterioration of the growth rate in 1989, prior to Iraq's invasion and occupation of Kuwait. JEPCO calculated its profit on 1 kWh of 12.21 Jordanian fils by deducting the cost of 1 kWh from the Jordan Electricity Authority (21.02) from the purchase price of 1 kWh to customers (33.23). However, it did not provide sufficient evidence that 12.21 Jordanian fils constitutes a net profit.

3. Recommendation

220. The Panel recommends no compensation for business transaction or course of dealing.

C. Summary of recommended compensation for JEPCO

221. Based on its findings regarding JEPCO's claim, the Panel recommends no compensation.

XI. THE CLAIM OF THE JORDANIAN ELECTRICAL & MECHANICAL ENGINEERING CO.

222. The Jordanian Electrical & Mechanical Engineering Co. ("JEME") is an entity existing under the laws of Jordan. On 10 January 1990, JEME entered into a contract with a Kuwaiti company, the National Company for Mechanical and Electrical Works Ltd. ("NCMEW") by which it agreed to perform mechanical and electrical works for Kuwait's new Embassy and Ambassador's residence complex in Sana'a, Yemen (the "Sana'a Contract"). JEME asserts that NCMEW suspended the contract on 22 August 1990 due to Iraq's invasion and occupation of Kuwait.

223. JEME seeks compensation in the total amount of USD 228,670 for overhead expenses, loss of profits, and claim preparation costs.

224. The claim preparation cost element is in the amount of USD 5,200. Applying the approach taken with respect to claim preparation costs set out in paragraph 60 of the Summary, the Panel makes no recommendation for claim preparation costs.

A. Loss or profits/overheads

1. Facts and contentions

225. JEME seeks compensation in the amount of USD 223,470 for (i) "expenses spent in Yemen" (USD 38,000); (ii) "overhead expenses" (USD 84,780); and (iii) "loss of the minimum net profit expected to be earned out of profit" (USD 100,690), in relation to the Sana'a Contract.

226. The Sana'a Contract was due to be completed by 10 April 1991. Work on the project was suspended on 22 August 1990 allegedly due to Iraq's invasion and occupation of Kuwait.

227. The "expenses spent in Yemen" were incurred between 7 February and 30 September 1990. They comprise the cost of setting up the site office, office furniture, the salary of the project manager, the accommodation of the project manager, car rental, water, electricity and fuel costs for the site office and accommodation, office secretary and office stationary, and a round trip airfare.

228. The "overhead expenses" were incurred in JEME's head office in Amman. JEME asserts that the Sana'a Contract amounted to 60 per cent of JEME's production capability. Accordingly, JEME attributes 60 per cent of the head office expenses incurred in Amman to the Sana'a Contract.

229. The "minimum net profit" is calculated as approximately 17 per cent of the total project value of USD 684,951. JEME asserts that this calculation was based on the personal experience of its General Manager "gained in the Yemeni market".

230. In its response to the article 34 notification, JEME stated that, in its opinion, the Sana'a Contract was not resumed after the cessation of

hostilities in Kuwait probably because: (a) the project did not have priority over reconstruction in Kuwait; and (b) because the diplomatic relationship between Kuwait and Yemen was suspended because of the support given by Yemen to Iraq during the crisis.

2. Analysis and valuation

231. With respect to losses suffered on projects located in Yemen, claimants must provide evidence that the losses were directly caused by Iraq's invasion and occupation of Kuwait, for example, because military operations elsewhere in the Middle East had a direct impact on the project in Yemen.

232. The Panel finds that JEME did not provide sufficient evidence that military operations elsewhere in the Middle East had a direct effect on the project located in Yemen. As suggested by JEME in its response to the article 34 notification, it appears to the Panel that the most likely explanation for the suspension of the Sana'a Contract, and the failure to resume it after the cessation of hostilities, was the decision of the Government of the State of Kuwait not to continue with the Sana'a Contract.

3. Recommendation

233. The Panel recommends no compensation for loss of profits/overheads.

B. Summary of recommended compensation for JEME

234. Based on its findings regarding JEME's claim, the Panel recommends no compensation.

XII. THE CLAIM OF ATLANTIC GULF & PACIFIC COMPANY OF MANILA, INC

235. Atlantic Gulf & Pacific Company of Manila, Inc. ("Atlantic") is a corporation existing under the law of the Philippines which operates as an engineering and manpower contractor in the Middle East. At the time of Iraq's invasion and occupation of Kuwait, Atlantic was performing manpower contracts in Kuwait and Iraq. Atlantic asserts that because of Iraq's invasion and occupation of Kuwait the contracts were interrupted.

236. Atlantic seeks compensation in the total amount of USD 288,817 for loss of profits, loss of tangible property, financial losses, and the expenses of demobilising a villa maintained for its manpower project in Kuwait.

A. Loss of profits

1. Facts and contentions

237. Atlantic seeks compensation in the amount of USD 228,984 (incorrectly stated as USD 228,944 in the "E" claim form) for "lost revenues" on four manpower contracts.

238. In the "E" claim form, Atlantic characterised these loss elements as contract losses, but the Panel finds that they are more accurately described as loss of profits.

(a) Safat Project, Kuwait

239. Atlantic seeks compensation in the amount of USD 44,497 for lost profits on its manpower contract for the Safat Project, Kuwait.

240. On 26 September 1989, Atlantic entered into an agreement with Cogelex Alsthom ("Cogelex"), a French corporation. Under the terms of the agreement, Atlantic agreed to provide services and manpower to Cogelex for the erection, commissioning and maintenance of electric power substations in Kuwait. Atlantic was required to supply personnel, at the rates stipulated in the contract, for a 24 month period commencing on 1 September 1989.

241. Atlantic asserts that as at 2 August 1990 there were 20 employees allocated to the Safat Project. Due to Iraq's invasion and occupation of Kuwait, all employees allocated to the Safat project were evacuated and the manpower contract was terminated. Atlantic claims for lost profits for the unperformed portion of the contract, namely, from 12 September 1990 (presumably the date of evacuation of the employees) to 31 August 1991.

(b) West Qurna Oil Field Project, Iraq

242. Atlantic seeks compensation in the amount of USD 2,469 (incorrectly stated as USD 2,429 in the "E" claim form) for lost profits on its manpower contract for the West Qurna Oil Field Project, Iraq.

243. On 1 April 1990, Atlantic entered into an agreement with Tecnologie Progetti Lavori S.p.A. ("TPL"), an Italian corporation. Under the terms of the agreement, Atlantic agreed to provide "supervision and utility personnel services" to TPL for the development of the West Qurna oil field in Iraq. Atlantic was required to supply personnel, at the rates stipulated in the contract, for the period 1 April 1990 to 31 October 1993.

244. Atlantic asserts that as at 2 August 1990, one employee was allocated to the West Qurna Oil Field Project. Due to Iraq's invasion and occupation of Kuwait, the employee was evacuated and the contract terminated. Atlantic claims for its lost profits for the unperformed portion of the contract, namely, from 12 October 1990 (presumably the date of evacuation of the employee) to 31 October 1993.

(c) TPL Branch Office Project, Iraq

245. Atlantic seeks compensation in the amount of USD 35,117 for lost profits on its manpower contract for TPL's branch office in Baghdad, Iraq.

246. On 1 April 1990, Atlantic entered into an agreement with TPL pursuant to which Atlantic agreed to provide "utility personnel services" for TPL's branch office in Baghdad, Iraq. Atlantic was required to supply personnel, at the rates stipulated in the contract, for the period 1 April 1990 to 31 October 1993.

247. Atlantic asserts that as at 2 August 1990, there were four employees allocated to the TPL Branch Office Project. Due to Iraq's invasion and occupation of Kuwait, the employees were evacuated and the contract terminated. Atlantic claims for its lost profits for the unperformed portion of the contract, namely, from various dates in September and October 1990 (presumably the dates of evacuation of the employees), to 31 October 1993.

(d) Al-Qaim Project, Iraq

248. Atlantic seeks compensation in the amount of USD 146,901 for lost profits on its manpower contract for the Al-Qaim Project, Iraq.

249. On 2 February 1990, Atlantic entered into an agreement with Spie Batignolles ("Spie"), a French corporation. Under the terms of the agreement, Atlantic agreed to provide Filipino workers for Spie's site at Al-Qaim. Atlantic was required to supply personnel, at the rates stipulated in the contract, for a 24 month period commencing 1 February 1990.

250. Atlantic asserts that as at 2 August 1990, there were 23 employees allocated to the Al-Qaim Project. Due to Iraq's invasion and occupation of Kuwait, the employees were evacuated and the contract terminated. Atlantic claims for its lost profits for the unperformed portion of the contract,

namely, from various dates in October and November 1990 (presumably the dates of evacuation of the employees) to 31 January 1992.

2. Analysis and valuation

251. The Panel finds that Atlantic had existing contractual relationships with Cogelex, TPL and Spie for the supply of manpower for various projects in Kuwait and Iraq. The Panel further finds that it is likely that the continuation of these contractual relationships was rendered impossible by Iraq's invasion and occupation of Kuwait.

252. However, Atlantic did not provide sufficient evidence that the four manpower contracts would have generated the profits claimed. Under the contract for the Safat Project, Cogelex could reduce the scope of work or defer the implementation of the work if this was required. Under the contracts for the West Qurna Oil Field Project and the TPL Branch Office Project, Atlantic was to provide personnel of "such number and qualification" as TPL may advise during the period of the contract. Under the contract for the Al-Qaim Project, Spie issued a "blanket order" for personnel taking into account Spie's own "mobilisation schedule...which will be updated from time to time".

253. Atlantic provided no evidence, in respect of the four contracts, that the number of personnel employed on the contracts as at 2 August 1990 would have remained constant for the period in respect of which Atlantic calculates its loss of profits.

254. The Panel also notes that Atlantic, in calculating its loss of profits, only made allowance for the wages payable by Atlantic to the workers. Atlantic provided no evidence of any other costs that it may have incurred in performing the manpower contracts, which may have affected the profitability of the contracts as a whole. Examples of such costs would be the overhead costs of its office in the Philippines, or the cost of insurance for the workers.

3. Recommendation

255. The Panel recommends no compensation for loss of profits.

B. Loss of tangible property

256. Atlantic seeks compensation in the amount of USD 13,830 (3,997 Kuwaiti dinars (KWD)) for loss of tangible property.

257. Atlantic asserts that, in order to complete the four manpower contracts described above, it maintained "vehicles and office equipments for the orderly administration of the ongoing projects".

258. It further asserts that, as a result of Iraq's invasion and occupation of Kuwait, it lost fixed assets with a net book value of KWD 3,997. Atlantic did not explain how the assets were lost, or where the

assets were located. It merely provides a list of fixed assets, including vehicles, a refrigerator, washing machines and television sets. The list states the "net book value" of each of the assets.

259. The Panel finds that the performance of Atlantic's manpower contracts may have required Atlantic to own the type of property for which it seeks compensation. However, the Panel finds that Atlantic did not provide sufficient evidence (a) that it owned the specific property claimed; (b) that the property was in Kuwait/Iraq at the time of Iraq's invasion and occupation of Kuwait; and (c) that the property was thereby lost.

260. The Panel recommends no compensation for loss of tangible property.

C. Financial losses

261. Atlantic seeks compensation in the amount of USD 26,522 (KWD 4,992 and USD 9,248) for the loss of the cash balances of four accounts maintained with the Gulf Bank, Kuwait.

262. In the "E" claim form, Atlantic characterised these loss elements as tangible property losses, but the Panel finds that they are more accurately described as financial losses.

263. The Panel finds that after the liberation of Kuwait, the Central Bank of Kuwait established procedures to provide claimants access to amounts on deposit with Kuwaiti banks. Atlantic provided correspondence dated between January and March 1992 in which it requested the Gulf Bank to close its four accounts and remit the balance in United States dollars to a Hong Kong bank account. However, despite a specific request for evidence from the secretariat, Atlantic provided no evidence that the Gulf Bank denied Atlantic access to its bank accounts.

264. The Panel recommends no compensation for financial losses.

D. Other - demobilisation expenses

265. Atlantic seeks compensation in the amount of USD 19,481 for the "final demobilisation" of Atlantic's Kuwait station at Villa Rowda.

266. In the "E" claim form, Atlantic characterised this loss element as "payment or relief to others", but the Panel finds that it is more accurately described as "other".

267. Atlantic engaged AGAP Arabia Ltd., a Saudi Arabian corporation, to send a representative to Kuwait to demobilise the Kuwait station "in order to limit and minimize [Atlantic's] contractual liabilities for the use of the villa". In October 1991 (some seven months after the liberation of Kuwait) AGAP Arabia Ltd. invoiced Atlantic for sums paid to the owner of the villa. These sums were for rental of the villa for five months, telephone bills for August 1990, and the cost of clearing broken property

and debris. AGAP Arabia Ltd. also invoiced Atlantic for the cost of the transport, food and hotel expenses of the representative who travelled from Saudi Arabia to Kuwait.

268. Save for the cost of clearing the villa of broken property and debris, the Panel finds that Atlantic did not provide sufficient evidence that the costs of demobilisation were directly caused by Iraq's invasion and occupation of Kuwait.

269. The Panel recommends compensation in the amount of USD 2,880 (SAR 10,784) for demobilisation expenses.

E. Summary of recommended compensation for Atlantic

270. The Panel recommends compensation in the amount of USD 2,880. The Panel finds the date of loss to be 2 August 1990.

XIII. THE CLAIM OF POLIMEX-CEKOP LTD.

271. Polimex-Cekop Ltd. ("Polimex") is a corporation existing under Polish law which provides manpower and technical services to a wide range of industries. It asserts that, at the time of Iraq's invasion and occupation of Kuwait, it had 18 contracts with various Iraqi state entities, and that these contracts were disrupted due to Iraq's invasion and occupation of Kuwait.

272. Polimex seeks compensation in the total amount of USD 51,683,454 for contract losses (in respect of all 18 contracts), loss of profits (in respect of four contracts), loss of tangible property (in respect of five contracts), evacuation costs (in respect of four contracts), and claim preparation costs.

273. The claim preparation cost element is in the amount of USD 1,514,599. Applying the approach taken with respect to claim preparation costs set out in paragraph 60 of the Summary, the Panel makes no recommendation for claim preparation costs.

A. Contract losses

274. Polimex seeks compensation in the amount of USD 16,887,035 for contract losses in respect of 18 contracts with Iraqi state agencies.

275. Polimex organised its claim in 18 separate volumes labelled Volume 2 to Volume 19. For ease of reference, the Panel refers to the claimant's volume number in this report.

276. In this section of the report the Panel considers whether Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in respect of each of the 18 claims for contract losses. The Panel makes a final recommendation in respect of contract losses after considering the question of advance payments. This appears in section D, infra.

1. Volume 2 - Contract 10-280/0-1198 ("NASSR")

277. Polimex seeks compensation in the amount of USD 439,659 for unpaid invoices on Contract 10-280/0-1198. Polimex entered into the contract on 30 April 1990 with the NASSR Establishment for Mechanical Industries Taji-Baghdad ("NASSR"). The contract provided for the employment of 60 Polish specialists in the Free Forging Plant, Project Taji for a period of 12 months. The value of the contract was USD 1,015,323 and IQD 316,410. The specialists were evacuated from the plant in January 1991.

278. The Panel finds that NASSR is an agency of the State of Iraq. The Panel further finds that NASSR failed to pay invoices in the amount of USD 439,659 for work performed between May and December 1990.

279. The Panel finds that Polimex provided sufficient evidence in support of its losses. It provided a copy of the contract with NASSR, copies of the outstanding invoices approved by NASSR, and correspondence that shows that the invoices were still outstanding in 1992.

280. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 439,659 in respect of Contract 10-280/0-1198.

2. Volume 3 - Contract 10-800/2-0011 ("SCCIP")

281. Polimex seeks compensation in the amount of USD 907,402 for contract losses under Contract 10-800/2-0011. The claim is for unpaid invoices (USD 514,156), amount due on signing of preliminary acceptance certificate (USD 244,312), and amount due on signing of final acceptance certificate (USD 148,934). Polimex entered into the contract on 11 March 1982 with the State Contracting Company for Industrial Projects ("SCCIP"). The contract provided for the construction of a railway system in Umm Qasr. The value of the contract was USD 3,090,775.

282. Polimex asserts that the works were finished in September 1989, the guarantee period began on 1 October 1989, the preliminary acceptance certificate was signed on 5 June 1990, and the final acceptance certificate was due to be signed in late 1990.

283. The Panel finds that SCCIP is an agency of the State of Iraq.

284. The Panel finds that the unpaid invoices relate to work that was performed prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for the unpaid invoices.

285. The Panel finds that the preliminary acceptance certificate was issued in September 1989, not on 5 June 1990, as asserted by Polimex in its statement of claim. Accordingly, the amount due on the signing of the preliminary acceptance certificate is a debt which arose prior to 2 May 1990 and is outside the jurisdiction of the Commission. The Panel recommends no compensation for this portion of the claim.

286. The Panel finds that the amount due on the signing of the final acceptance certificate was due in October 1990. The Panel finds that Polimex provided sufficient evidence that the amount of USD 148,934 was not paid due to Iraq's invasion and occupation of Kuwait.

287. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 148,934 in respect of Contract 10-800/2-0011.

3. Volumes 4 - 10 Contracts 10-222/1-0023, 24, 25, 26, 27, 28, 30 ("SPENA")

288. Polimex seeks compensation in the amount of USD 189,015 for unpaid retention money withheld under seven contracts entered into with the State Poultry Establishment Northern Area ("SPENA"). The contracts provided for the construction of poultry farms. All seven contracts were entered into on 15 July 1981 and were completed in March 1986.

289. The Panel finds that the retention money withheld under all seven contracts was due and payable prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

290. The Panel recommends no compensation for Contracts 10-222/1-0023, 24, 25, 26, 27, 28 and 30.

4. Volume 11 - Contract 10-430/5-0206 ("SCCIP")

291. Polimex seeks compensation in the amount of USD 475,979 for "unsettled payments in respect of provisional invoices for work in progress, amounts due in respect of PAC, maintenance and FAC" on Contract 10-430/5-0206. Polimex entered into the contract on 23 December 1985 with the State Contracting Company for Industrial Projects ("SCCIP"). The contract provided for the construction of a grain silo at Umm Qasr. The value of the contract was USD 5,481,213. Polimex asserts that the construction of the silo was finished on 9 October 1989.

292. The Panel finds that Polimex did not provide sufficient information or evidence to enable the Panel to adequately assess the claim. There appear to be four components of the claim: (i) outstanding invoices in respect of work in progress; (ii) outstanding invoices in respect of maintenance; (iii) amount due on signing of provisional acceptance certificate; and (iv) amount due on signing of final acceptance certificate. However, the Panel has been unable to determine, firstly, the amount attributable to each component, and, secondly, whether the debt arose before or after 2 May 1990.

293. The Panel recommends no compensation for Contract 10-430/5-0206.

5. Volume 12 - Contract 10-280/0-1251 ("CCSE")

294. Polimex seeks compensation in the amount of USD 269,385 for what it terms "unpaid invoices" on Contract 10-280/0-1251. Polimex entered into the contract on 11 June 1990 with the Central Cement State Enterprise ("CCSE"). The contract provided for the supply of technical assistance by

six Polish specialists at the Falluja cement plant for a period of one year. The value of the contract was USD 298,000. The specialists were evacuated from Iraq in October 1990.

295. The documentation submitted in support of the claim demonstrates that the claim for "unpaid invoices" comprises two parts, as follows: (i) the outstanding United States dollar amounts on four invoices for work performed between June and October 1990 (USD 22,037); and (ii) the loss of profits on the work which Polimex would have performed between October 1990 and June 1991, had the contract not been interrupted by Iraq's invasion and occupation of Kuwait.

296. The Panel finds that Polimex did not provide sufficient evidence in support of its claim for the outstanding amounts in relation to work performed between June and October 1990. It only provided a copy of the contract and a letter dated 9 May 1992 from CCSE to Polimex stating that the total amount of USD 22,037 had not been transferred to Polimex. Polimex did not provide copies of the invoices or evidence of the work performed.

297. The Panel finds that Polimex did not provide sufficient evidence to support its claim for loss of profits in respect of work performed between October 1990 and June 1991. It provided only the contract and the letter referred to in the previous paragraph.

298. The Panel recommends no compensation for Contract 10-280/0-1251.

6. Volume 13 - Contract 10-280/9-0951 ("SEIS")

299. Polimex seeks compensation in the amount of USD 239,168 for what it terms "unpaid invoices" on Contract 10-280/9-0951. Polimex entered into the contract on 19 October 1989 with the State Enterprise for Iron and Steel ("SEIS"). The contract provided for the delivery and erection of steel structures for a steelworks in Basrah. The value of the contract was USD 34,235,000.

300. Polimex asserts that the first six months of the contract (January to June 1990) was a "preliminary period for familiarisation with technical documentation, ordering materials, making equipment, starting production of the structure elements etc". The claim for "unpaid invoices" relates to this six month period. However, Polimex provided no information, apart from that contained in the contract, concerning the date, amount, or nature of the work included in the invoices.

301. The Panel is unable to recommend compensation in respect of the "unpaid invoices". There is evidence that Polimex entered into the contract with SEIS in October 1989. There is also evidence that Polimex performed work during the "preliminary period" of the contract. This is in the form of invoices in respect of paint purchased from a Dutch company

(although there is no proof that the paint was used for this project), and import customs declarations confirming importation into Iraq between March and October 1990 of camp equipment, vehicles and steel structure elements for the client SEIS. However, Polimex did not provide copies of the relevant invoices and it is not possible to discern the portion of the work that was performed after 2 May 1990.

302. The Panel recommends no compensation for Contract 10-280/9-0951.

7. Volume 14 - Contract 10-280/0-1109 ("AMCC")

303. Polimex seeks compensation in the amount of USD 47,750 for unpaid invoices for work performed in the period May to July 1990 on Contract 10-280/0-1109. Polimex entered into the contract on 13 February 1990 with Al-Mansour Contracting Co. ("AMCC"). The contract provided for the construction of a silo production line. The value of the contract was USD 175,500. Polimex asserts that it fully discharged its contractual obligations.

304. The Panel finds that AMCC is an agency of the State of Iraq. The Panel further finds that AMCC has not paid invoices for work performed between May and July 1990. However, the documentation provided by Polimex refers to conflicting amounts as owing under the invoices. The Panel finds that the amount owing under the invoices is USD 28,600, the amount stated in a payment order dated 2 September 1990 from AMCC to the Central Bank of Iraq.

305. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 28,600 in respect of Contract 10-280/0-1109.

8. Volume 15 - Contract 10-287/9-0727 ("FAO")

306. Polimex seeks compensation in the amount of USD 763,447 for unpaid invoices, numbers 13 to 19, for work performed in the period April to October 1990 on Contract 10-287/9-0727. Polimex entered into the contract on 11 March 1989 with FAO State Establishment ("FAO"). The contract provided for the assignment of 139 Polish specialists to Iraq for a period of six months. The value of the contract was USD 5,001,498.

307. The Panel finds that FAO is an agency of the State of Iraq.

308. The Panel finds that the work included in invoice No. 13 was performed in April 1990. The claim in respect of this amount, i.e., USD 157,762 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

309. The Panel finds that the work included in invoice nos. 14-19 was performed after 2 May 1990. However, the documentation provided by Polimex refers to conflicting amounts as owing under the invoices. The Panel finds that the amount owing under the invoices is USD 575,543, the amount described as outstanding in a letter dated 23 March 1990 from FAO to Polimex.

310. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 575,543 in respect of Contract 10-287/9-0727.

9. Volume 16 - Contract 10-280/0-1245 ("Bader")

311. Polimex seeks compensation in the amount of USD 10,230,000 for what it terms "unpaid invoices" on Contract 10-280/0-1245. Polimex entered into the contract on 12 June 1990 with Bader State Establishment ("Bader"). The contract provided for the design and manufacture of steel structures. The value of the contract was USD 10,230,000 and IQD 165,000.

312. The Panel is unable to recommend compensation for the "unpaid invoices". Polimex provided evidence that it entered into a contract with Bader and that Polimex granted an advance payment guarantee to Bader. However, Polimex did not provide copies of invoices totalling USD 10,230,000, or evidence of work performed.

313. The Panel recommends no compensation for Contract 10-280/0-1245.

10. Volume 17 - Contract 10-430/7-0343/1 ("FAO")

314. Polimex seeks compensation in the amount of USD 2,605,343 for unpaid invoices on Contract 10-430/7-0343/1. Polimex entered into the contract on 22 April 1989 with FAO. The contract provided for the employment of Polish specialists on various FAO projects. Polimex did not state the total value of the contract. Polimex asserts that the specialists were evacuated from Iraq in December 1990.

315. The Panel finds that FAO has not paid invoices in the amount of USD 827,325 for work performed after 2 May 1990.

316. The Panel finds that Polimex provided sufficient evidence in support of its losses. It provided a copy of the contract with FAO, copies of the outstanding invoices approved by FAO, and correspondence that shows that the invoices were still outstanding in 1992.

317. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 827,325 in respect of Contract 10-430/7-0343/1.

11. Volume 18 - Contract 10-280/9-0892 ("SEIDACC")

318. Polimex seeks compensation in the amount of USD 659,843 for unpaid invoices on Contract 10-280/9-0892. Polimex entered into the contract on 8 July 1989 with the State Engineering Co. for Industrial Design and Construction ("SEIDACC"). The contract provided for installation and mechanical erection services to be carried out over a period of six months on a Granulation (Fertiliser) Plant at Al-Qaim. The total value of the contract was USD 2,700,000. Polimex asserts that the specialists were evacuated from Iraq in September 1990.

319. The Panel finds that SEIDACC is an agency of the State of Iraq.

320. The Panel finds that unpaid invoices totalling USD 269,118 relate to work that was performed prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for this amount.

321. The Panel further finds that SEIDACC has not paid invoices in the amount of USD 390,725 for work performed after 2 May 1990. The Panel finds that Polimex provided sufficient evidence in support of those losses. It provided a copy of the contract with SEIDACC, copies of the outstanding invoices approved by SEIDACC, and correspondence that shows that the invoices were still outstanding in 1992.

322. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 390,725 in respect of Contract 10-280/9-0892.

12. Volume 19 - Contract 10-280/0-1272 ("SEIDACC")

323. Polimex seeks compensation in the amount of USD 60,044 for unpaid invoices on Contract 10-280/0-1272. Polimex entered into the contract on 29 May 1990 with SEIDACC. The contract provided for the supply of Polish specialists for the assembly of a paint shop in Fallujah. The value of the contract was USD 120,500. The contract was completed in October 1990.

324. The Panel finds that SEIDACC has not paid invoices in the amount of USD 60,044 for work performed after 2 May 1990.

325. The Panel finds that Polimex provided sufficient evidence in support of its losses. It provided a copy of the contract with SEIDACC, and copies of the outstanding invoices approved by SEIDACC.

326. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 60,044 in respect of Contract 10-280/0-1272.

B. Loss of profits

327. Polimex seeks compensation in the amount of USD 30,334,846 for loss of earnings on four of the 18 contracts on which it was working in Iraq.

1. Volume 2 - Contract 10-280/0-1198 ("NASSR")

328. Polimex seeks compensation in the amount of USD 1,151,206 for the loss of earnings on Contract 10-280/0-1198 (see paragraphs 277 to 280, supra).

329. Polimex asserts that, at the time the Polish specialists were evacuated, there were still works to be discharged on the contract in the amount of USD 572,602 and IQD 179,378. Using the exchange rate 1 IQD = 3.208889, Polimex states that the "value of the work which could not be continued" because of the war is equal to USD 1,151,206.

330. The Panel finds that Polimex did not provide sufficient evidence to enable the Panel to calculate the net loss of profits on this contract. Polimex claimed for the balance of possible gross earnings under the contract. It did not calculate the net loss of profits, nor did it provide sufficient evidence to enable the Panel to make the calculation.

331. The Panel recommends no compensation for loss of profits on Contract 10-280/0-1198.

2. Volume 13 - Contract 10-280/9-0951 ("SEIS")

332. Polimex seeks compensation in the amount of USD 28,652,539 for the loss of earnings on Contract 10-280/9-0951 (see paragraphs 299 to 302, supra).

333. Polimex provided little information in support of its claim. It merely states that the "Iraqi invasion of Kuwait on August 2, 1990 made it impossible for the parties to implement the contract. Military operations prevented Polimex-Cekop Ltd from discharging further services, especially shipment of the fabricated structures stored in the Polish port or their erection in Iraq".

334. Polimex did not state how the claimed amount was calculated. The only other figures provided are the total estimated value of the contract (USD 34,235,000) and the total advance payments made (USD 4,671,312).

335. The Panel finds that Polimex did not provide sufficient evidence to enable the Panel to calculate the net loss of profits on this contract. Polimex did not state how the claimed amount was calculated. It provided no evidence relating to the costs of the contract. The only evidence concerning profitability is a general statement that the average profitability over a 20 year period was 35 per cent. The Iraqi branch accounts show that losses of IQD 2,259,601 were incurred on the contract,

but Polimex provided neither a breakdown of the costs or evidence that the sums have been paid.

336. The Panel recommends no compensation for loss of profits on Contract 10-280/9-0951.

3. Volume 15 - Contract 10-287/9-0727 ("FAO")

337. Polimex seeks compensation in the amount of USD 234,600 for the loss of earnings on Contract 10-287/9-0727 (see paragraphs 306 to 310, supra).

338. Polimex provided little information in support of its claim. It merely states that "the necessity of evacuating the staff from the war zone made it impossible to discharge all the works in accordance with the contract. At the moment when the Iraqi authorities, as a result of intervention of Polish authorities, issued exit visas for the Polish specialists, the contractual works were discharged in 95.8 per cent. The value of works not yet discharged amounted to USD 234,600."

339. The Panel finds that Polimex did not provide sufficient evidence to enable the Panel to calculate the net loss of profits on this contract. Polimex claimed for the balance of possible gross earnings under the contract. It did not calculate the net loss of profits, nor did it provide sufficient evidence to enable the Panel to make the calculation.

340. The Panel recommends no compensation for loss of profits on Contract 10-287/9-0727.

4. Volume 17 - Contract 10-430/7-0343/1 ("FAO")

341. Polimex seeks compensation in the amount of USD 296,501 for the loss of earnings on Contract 10-430/7-0343/1 (see paragraphs 314 to 317, supra).

342. Polimex provided little information in support of its claim. It merely states that "... as a result of the outbreak of the war and connected with it danger for people in the war zone, it was impossible to continue the implementation of the contract. This situation deprived Polimex-Cekop Ltd of earnings in the amount of USD 296,501.34 which was a difference between the value of the contract which was to be executed till the end of February 1991, and the value which was executed till the end of November 1990."

343. The Panel finds that Polimex did not provide sufficient evidence to enable the Panel to calculate the net loss of profits on this contract. The claim appears to be for possible gross earnings under the contract. Polimex did not specify the contract sum. No other calculations are provided to support the claim.

344. The Panel recommends no compensation for loss of profits on Contract 10-430/7-0343/1.

C. Loss of tangible property

1. Facts and contentions

345. Polimex seeks compensation in the amount of USD 2,554,929 for the loss of tangible property related to five of the 18 contracts that Polimex had with Iraqi state agencies.

346. In this section of the report the Panel considers the five claims for loss of tangible property, and makes a preliminary recommendation for compensation (see paragraph 354, infra). The Panel makes a final recommendation in respect of tangible property losses after it has considered the question of advance payments. This appears in paragraph 359, infra.

347. Polimex states that most of its property was located at three camps: the first "in the suburbs of Baghdad, on the road to Baquba"; the second at the Ten Berth Project in Umm Qasr; and the third at the Ashtar Steel Plant in Khoral Zubair.

348. Polimex asserts that when its workers were evacuated towards the end of 1990, it employed a guard to patrol the camps and protect the property left behind. However, despite its best efforts the property was "stolen or destroyed".

349. In its response to the article 34 notification, Polimex provided the following further information about how the property was lost:

a. The site in the suburbs of Baghdad "was the scene of thefts during the war in the Gulf";

b. The other two camps were "taken over during the war either by the army or by Al Fao Establishment, without any confiscation documents being issued on that account";

c. "The final confiscation of the assets of foreign companies operating in Iraq took place in 1992, pursuant to the President of Iraq's decree of April 16, 1992"

350. The name of the contract, the location of the contract site, the description of the property, the information provided by Polimex concerning how the property was lost, and the amount of the claim, in relation to each of the five contracts, is included in table 3, infra.

Table 3. Polimex' claim for loss of tangible property

Contract	Contract site	Description of property	Means of loss	Amount of claim
Volume 2 10-280/0-1198	Free forging plant, Taji	TV set, tape recorder, "Kasetka NA Pieniadze", Pic Up Nissan, Nissan bluebird, etc.	"stolen and destroyed"	USD 6,905
Volume 3 10-800/2-0011	Railway system, Umm Qasr	51 items including vehicles, concrete mixers, construction equipment, airconditioners, etc.	"stolen and destroyed"	IQD 535,488 (converted by Polimex to USD 1,724,272)
		3 items - Nissan bus, Nissan pick-up, deep freezer	"confiscated by the Iraqi authorities"	IQD 30,670 (converted by Polimex to USD 98,757)
Volume 11 10-430/5-0206	Grain silo, Umm Qasr	Approx. 70 items of property including vehicles, welding machines, generators, refrigerators	"stolen or destroyed"	USD 16,896
Volume 13 10-280/9-0951	Steelworks, Basra	Approx. 40 items of property including camp equipment, vehicles, video recorders	Not stated	IQD 208,690 (converted by Polimex to USD 671,982)
Volume 17 10-430/7-0343/1	Various FAO projects (no further information provided)	Approx. 350 items of equipment including vehicles, welders, heaters, caravans, etc.	"stolen and destroyed"	USD 36,117

2. Analysis and valuation

351. On the evidence provided by Polimex, the Panel is satisfied that: (a) property owned by Polimex was being used in Iraq as at August 1990 on various contracts which Polimex had entered into with various Iraqi state agencies; (b) at least some of this property was stolen or damaged between 2 August 1990 and the first part of 1991; (c) the Umm Qasr camp was looted and destroyed in March 1991; and (d) other property was confiscated by the Iraqi authorities in 1992.

352. However, the Panel finds that Polimex did not clearly indicate which items of property were stolen, which were damaged, and which were confiscated.

353. The Panel finds that Polimex provided sufficient evidence that: (a) it owned the specific property claimed; (b) the property was in Iraq at the time of Iraq's invasion and occupation of Kuwait; and (c) in respect of some of the property claimed on Contract 10-800/2-0011 (Vol. 3) and the property claimed on Contract 10-280/9-0951 (Vol. 13) only, the property was lost as a direct result of Iraq's invasion and occupation of Kuwait. The Panel values this property at USD 392,804 (IQD 122,162) in respect of Contract 10-800/2-0011 (Vol. 3), and USD 671,029 (IQD 208,690) in respect of Contract 10-280/9-0951 (Vol. 13).

354. The Panel considers that Polimex has suffered a loss resulting directly from Iraq's invasion and occupation of Kuwait in the amount of USD 1,063,833 (IQD 330,852).

D. Advance payments

1. Facts and contentions

355. In its procedural order dated 7 December 1999, the Panel requested Polimex, in respect of each of the 18 contracts for which it seeks compensation for contract losses, to provide evidence of (a) any advance payments received by Polimex; and (b) whether Polimex retains any such advance payment or has repaid it to the Iraqi employer.

356. On 20 December 1999 Polimex responded that it had received an advance payment only with respect to Contract No. 10-280/9-0951 (Vol. 13). The value of the advance payment which it still retains is USD 3,736,961.

2. Analysis and valuation

357. Applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the Panel finds that Polimex must account for the advance payment in reduction of its claim. Given that the purpose of the advance payment in this case was also to purchase tangible property, the Panel finds that the advance payment must also be accounted for in any tangible property claim made by the claimant.

358. Accordingly, the Panel finds that the contract losses and tangible property losses incurred by Polimex in respect of the 18 manpower contracts equal the direct contract losses (USD 2,470,830) plus the direct tangible property losses (USD 1,063,833) less the advance payment still retained by Polimex (USD 3,736,961). As this calculation produces a negative figure, the Panel is unable to recommend compensation for contract losses or loss of tangible property.

3. Final recommendation for contract losses and loss of tangible property

359. The Panel recommends no compensation for contract losses and loss of tangible property.

E. Payment or relief to others

1. Facts and contentions

360. Polimex seeks compensation in the amount of USD 392,045 (3,682,238,428 Polish zloties (PLZ) and USD 5,574) for the costs of evacuating workers on four of the 18 contracts on which Polimex was working in Iraq.

361. The name of the contract, the employer, the liability for the airfare of the workers, the number of evacuees, and the amount of the claim is set out in table 4, infra.

Table 4. Polimex' claim for payment or relief to others

Contract	Employer	Liability for airfare	No. of evacuees	Amount (PLZ)
Volume 2 Contract 10-280/0-1198	NASSR Establishment for Mechanical Industries Taji-Baghdad	Under terms of contract NASSR responsible for "air tickets for route Warsaw - Baghdad - Warsaw" for Polimex staff	3	22,433,820
Volume 3 Contract 10-800/2-0011	State Contracting Company for Industrial Projects	According to statement of claim "under the agreement the travel costs of the Polish workers were to be settled by the Iraqi party"	64	463,103,314
Volume 17 Contract 10-430/7-0343/1	FAO State Establishment	Under terms of contract FAO responsible for "air tickets for route Warsaw - Baghdad - Warsaw" for Polimex staff	Not stated	3,144,367,194
Volume 19 Contract 10-280/0-1272	State Engineering Co. for Industrial Design and Construction	Under terms of contract SEIDACC responsible for "air tickets to and from Iraq" for Polimex employees	7	52,334,100

362. In respect of Contract 10-800/2-0011 (Vol. 3) Polimex also seeks compensation for (a) accommodation in Amman for two persons (USD 100), (b) costs of "approaching to Jordan" for two employees (USD 161), and (c) hiring of additional watchmen (USD 5,313).

2. Analysis and valuation

363. The Panel finds that Polimex provided sufficient evidence to support its claim for the airfares. It provided passenger manifests from Polish Airlines, debit notes from the Polish "Ministry of Economic Cooperation

With Abroad" for charter flights from Baghdad to Warsaw for various dates between August 1990 and May 1991, and receipts for the claimed amounts of the airfares.

364. The Panel finds that in the ordinary course of events the Iraqi employer would have borne the cost of returning the workers to Poland upon completion of the contract. Accordingly, the airfares constitute an additional cost that Polimex would not have incurred upon natural completion of the contract.

365. The Panel finds that Polimex did not provide sufficient evidence to support the three additional claims made on Contract 10-800/2-0011 (Vol. 3). In respect of items (a) and (b) (accommodation in Amman for two persons and costs of "approaching to Jordan" for two employees), Polimex provided an invoice for local evacuation costs, and an untranslated document. It did not explain how these documents relate to its claim.

366. In respect of item (c) (hiring of additional watchmen), the Panel finds that Polimex did not provide sufficient evidence to enable the Panel to determine whether the cost was directly due to Iraq's invasion and occupation of Kuwait. The only evidence is an agreement which could be terminated at any time by Polimex. There is no evidence of payment to the watchman.

3. Recommendation

367. The Panel recommends compensation in the amount of USD 395,514 (PLZ 3,682,238,428) for payment or relief to others.

F. Summary of recommended compensation for Polimex

368. Based on its findings regarding Polimex's claim, the Panel recommends compensation in the amount of USD 395,514. The Panel finds the date of loss to be 2 August 1990.

XIV. THE CLAIM OF BECHTEL LIMITED

369. Bechtel Limited ("Bechtel"), a company incorporated in the United Kingdom, is a wholly owned subsidiary of Bechtel Group Inc., an international construction company based in San Francisco.

370. On 28 October 1989, Bechtel entered into a Technical Services Agreement (the "TSA") with the Technical Corps for Special Projects, Ministry of Industry, Iraq ("Techcorp"). The agreement provided for the provision of engineering, financing, procurement, project management, construction and other related services in relation to the PC-2 Project - a large petrochemicals production facility located 60 kilometres from Baghdad, Iraq.

371. Bechtel seeks compensation in the total amount of USD 10,013,427 (5,162,993 Pounds sterling (GBP)) for unpaid amounts under the TSA, loss of profits, payment and relief to others, finance costs and interest. The total amount of Bechtel's alleged losses on the PC-2 Project is USD 12,013,427 (GBP 6,319,063). However, in presenting its claim, Bechtel deducted the amount of GBP 1,156,069 from from the gross amount of its alleged losses to account for the amount of USD 2,000,000 recovered from its insurers in respect of some of its losses.

372. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Bechtel's claim for interest.

A. Contract losses

1. Facts and contentions

373. Bechtel seeks compensation in the amount of USD 3,034,465 (GBP 1,596,128) for contract losses. The claim is for unpaid amounts invoiced to Techcorp under the TSA.

374. Bechtel and Techcorp entered into the TSA when, during the course of another Technical Services Agreement dated 20 July 1988 between Techcorp and Overseas Bechtel Inc., (another wholly-owned subsidiary of Bechtel Group Inc.), Techcorp indicated its wish to take advantage of an international credit facility of up to GBP 100,000,000 supported by the Export Credits Guarantee Department ("ECGD"). The ECGD is a United Kingdom Government credit agency that provides financial support for international trade transactions. In order to take advantage of this credit facility, Techcorp wished to enter into a contract with a Bechtel entity registered in the United Kingdom.

375. Bechtel states that it commenced providing services under the TSA after 27 April 1990. On 6 June 1990, it presented Techcorp with its first invoice for the supply of services up to 13 May 1990. The amount of the invoice was GBP 253,552. According to Bechtel, this was the only invoice that was paid by Techcorp.

376. Bechtel states that it continued to provide services to Techcorp up to 2 August 1990. It ceased all work on the PC-2 Project on this date. However, it continued to incur overhead costs until October 1990. Bechtel subsequently submitted to Techcorp further invoices for services rendered and overhead costs totalling GBP 1,596,128. However, although the outstanding invoices were never disputed by Techcorp, the "invoices were not formally approved by Techcorp ... and no payment has been received".

377. According to Bechtel, Techcorp refused to approve the outstanding invoices, "which prevented Bechtel from presenting the invoices against the appropriate credit facility". Approval of the invoices by Techcorp was a condition for payment under the appropriate credit facility.

378. The TSA provided for Techcorp to make an advance payment to Bechtel in the sum of GBP 588,235 within a specific time period. However, in response to a request for additional information made by the Panel, Bechtel stated that Techcorp was not able to secure the prerequisite letter of credit as set forth in the TSA and no advance payment was made to Bechtel.

2. Analysis and valuation

379. The Panel finds that Techcorp is an agency of the State of Iraq.

380. The supporting documentation provided by Bechtel indicates that the performance that created the debts in question occurred between May and August 1990 (in the case of services rendered) and between May and October 1990 (in the case of overhead costs). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the contract losses relate to work performed subsequent to 2 May 1990 and are, therefore, compensable in their entirety. From the documentation provided by Bechtel, the Panel was able to identify the value of the work performed and recommends compensation in the amount of USD 3,034,465.

3. Recommendation

381. The Panel recommends compensation in the amount of USD 3,034,465 for contract losses.

B. Loss of profits

1. Facts and contentions

382. Bechtel seeks compensation in the amount of USD 4,121,064 (GBP 2,167,680) for loss of profits. The claim is for loss of anticipated profits (i.e., profits expected to be earned during the period 2 August 1990 to 22 July 1991) resulting from the early termination of the TSA. In its Statement of Claim, Bechtel states that 22 July 1991 was "the period anticipated to be covered by the [TSA]".

383. The amount claimed is based on the calculation of average payroll values prior to 2 August 1990 using the multipliers and additives set forth in the TSA.

2. Analysis and valuation

384. In support of its claim, Bechtel provided a schedule of loss of profits. The schedule sets out the total charges and "multiplier values" for its United Kingdom employees in relation to "home office", "project office" and "project site" for the six fortnightly pay periods between 13 May and 22 July 1990. In response to a request for further information, Bechtel stated that it had been unable to locate financial statements or balance sheets relevant to its operations in Iraq. The Panel finds that Bechtel failed to justify the calculation of the claimed figure and also failed to demonstrate that its work under the TSA would have been profitable as a whole.

385. The Panel finds that Bechtel failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

3. Recommendation

386. The Panel recommends no compensation for loss of profits.

C. Payment and relief to others

1. Facts and contentions

387. Bechtel seeks compensation in the amount of USD 3,458,869 (GBP 1,819,365) for payment or relief to others. The claim is for the costs of salaries and other benefits paid to its United Kingdom employees between August 1990 and March 1991. Bechtel states that "during the illegal detention of its employees in Iraq, Bechtel continued to pay their remuneration and other contractual benefits, including payroll, vacation pay-off and other expenditure totalling GBP 1,819,365".

388. Although more than 100 Bechtel group employees were detained in Iraq before being evacuated between 2 August and 11 December 1990, only 88 of those detained individuals were Bechtel employees assigned to the PC-2 Project. The claim by Bechtel relates to those 88 employees only.

389. Bechtel provided a statement, dated 6 February 1992, by an employee, who was the senior representative of the Bechtel group of companies in Iraq during the period of detention of Bechtel's staff. The statement contains an account of the circumstances of the detention of Bechtel's staff. A list of employees and their dependants who were in Iraq as at 2 August 1990 is attached to the statement.

390. The statement indicates that extensive repatriation of Bechtel's employees from Iraq had taken place by 8 December 1990. On 10 December

1990, the remaining United Kingdom employees left Baghdad. The author of the statement was the last of the employees to depart Iraq on 11 December 1990.

2. Analysis and valuation

391. The Panel finds that the salary costs of Bechtel's employees are compensable in principle. However, given that the last Bechtel employee departed Iraq on 11 December 1990, it is unclear to the Panel why Bechtel is claiming for salary costs and special allowances to March 1991 (inclusive). The Panel finds that the salary costs claimed for the months of January to March 1991 (inclusive) were not incurred as a direct result of Iraq's invasion and occupation of Kuwait and are not compensable. The Panel further finds that an adjustment of the December 1990 payroll should be made to reflect the extensive repatriation of Bechtel's employees that had taken place prior to 8 December 1990. After making this adjustment, the Panel recommends compensation in the amount of GBP 1,077,048.

3. Recommendation

392. The Panel recommends compensation in the amount of USD 2,047,620 (GBP 1,077,048) for payment and relief to others.

D. Finance costs

393. Bechtel seeks compensation in the amount of USD 1,399,029 (GBP 735,889) for finance costs. The claim is for premium costs in relation to financial assistance provided by the ECGD (GBP 720,589) and advance payment guarantee costs (GBP 15,300).

(a) ECGD premium costs

394. Bechtel states that, in November 1989, Bechtel, in conjunction with Techcorp, applied to the ECGD for financial assistance to support the PC-2 Project. After negotiations with the Midland Bank, on behalf of the ECGD, credit facilities were made available to Rafidain Bank. The amount of the finance charge was agreed at GBP 1,235,294.

395. According to Bechtel, Techcorp considered the fee of GBP 1,235,294 too high and counter-proposed an amount of GBP 720,589. The management of Bechtel decided to accept Techcorp's counter-proposal. Bechtel alleges that Techcorp agreed to reimburse it the amount of GBP 720,589 as part of the reimbursable costs under the TSA. However, this amount was never reimbursed.

396. The Panel finds that Bechtel failed to establish the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The finance charge was akin to an insurance premium paid under the credit risk guarantee cover. The Panel finds that the finance charge was an amount that a contractor would ordinarily expect to expend whether or not

recompense was received under the relevant insurance cover. Moreover, the Panel finds that, although Bechtel provided evidence that it sought Techcorp's formal agreement to reimburse the amount claimed under the TSA, it did not demonstrate that Techcorp actually agreed to do so.

397. The Panel recommends no compensation for ECGD premium costs.

(b) Advance payment guarantee costs

398. Bechtel states that, in accordance with the terms of the TSA, it "arranged for an advance payment guarantee to be issued by Rafidain Bank to Techcorp in the sum of GBP 588,235, being 5 per cent of the eligible value (as defined in the TSA) to guarantee the performance of Bechtel under the TSA". Bechtel alleges that it incurred correspondence charges to Barclays Bank Plc in the amount of GBP 15,300 for the provision of this guarantee.

399. In its response to the Panel's request for additional information made by the Panel, Bechtel states that it did not receive the advance payment under the TSA.

400. In support of its claim, Bechtel provided an invoice dated 23 July 1990 from Barclays Bank Plc for the claimed amount. However, Bechtel provided no evidence that it paid the amount invoiced. Accordingly, the Panel recommends no compensation for advance payment guarantee costs.

Recommendation

401. The Panel recommends no compensation for finance costs.

E. Bechtel's insurance recovery

402. Bechtel states that, in conjunction with other Bechtel group companies, it sought to recover some of its losses under the Bechtel group insurance policies. A total amount of USD 6,959,349 was recovered in respect of all of the Bechtel group's losses. Bechtel states that, of this amount, the sum of USD 2,000,000 was allocated to it.

403. Bechtel provided a statement dated 10 February 1994 made by the Risk Management Supervisor of the Bechtel Group Inc. The statement confirms that, of the total amount paid out to the various Bechtel entities, USD 2,000,000 was allocated to Bechtel Limited for "salaries paid to United Kingdom employees on the PC-2 Project who were detained by Iraq".

404. Bechtel calculated the net amount of its claim by deducting USD 2,000,000 from the gross amount of its asserted losses. This is the correct approach and the Panel has followed it in reaching its conclusion.

F. Summary of recommended compensation for Bechtel

405. Based on the Panel's findings regarding Bechtel's claim, the following is the calculation:

Table 5. Recommended compensation for Bechtel

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	3,034,465	3,034,465
Loss of profits	4,121,064	nil
Payment or relief to others	3,458,869	2,047,620
Finance costs	1,399,029	nil
Less insurance recovery	(2,000,000)	(2,000,000)
Total	10,013,427	3,082,085

406. The Panel recommends compensation in the amount of USD 3,082,085. The Panel finds the date of loss to be 2 August 1990.

XV. THE CLAIM OF DAVY MCKEE (LONDON) LIMITED

407. Davy McKee (London) Limited ("Davy McKee"), a corporation existing under the laws of the United Kingdom, is a "trading company concerned with the provision of research and development, process engineering, technology licensing and commissioning services for a range of proprietary and licensed-in technology". On 28 September 1988, Davy McKee entered into a contract with the State Enterprise for Phosphate, Iraq ("SEP") for a NPK Granulation (Fertiliser) Plant at Al-Qaim in Iraq on a lump sum (fixed price) turnkey basis. The total value of the contract was GBP 13,596,000. On 26 March 1989, SEP assigned the contract to the Ministry of Industry, Fertiliser Projects Commission, Baghdad ("FPC"). Davy McKee asserts that the contract was disrupted due to Iraq's invasion and occupation of Kuwait.

408. Davy McKee seeks compensation in the total amount of USD 3,047,678 (GBP 1,603,079) for contract losses, including: (a) equipment delivered; (b) equipment not shipped; (c) site services; (d) materials supplied; and (e) retention monies.

A. Contract losses (equipment delivered)

1. Facts and contentions

409. Davy McKee seeks compensation in the amount of USD 246,223 (GBP 129,513) for equipment delivered to the project site in Iraq, in respect of which it allegedly received no payment from the Iraqi employer. Davy McKee calculates its claim as follows:

Table 6. Davy McKee's claim for contract losses (equipment delivered)

Item	Claim amount (GBP)
Invoice 97152	48,300
Invoice 97409	59,245
Invoice 97441	10,000
Invoice 97821	34,824
Sub-total	152,369
Less advance payment (15 per cent)	(22,856)
Total	129,513

410. The invoice number, description of equipment, date of invoice, and date of delivery of the equipment to Iraq, appear in table 7, *infra*.

Table 7. Davy McKee's claim for contract losses (equipment delivered)

Invoice	Description of equipment	Date of invoice	Date of delivery to Iraq
No. 97152	Rubber	30 November 1989	November 1989
No. 97409	Starters, fuses, transformers, etc.	22 March 1990	February 1990
No. 97441	Belting, mortar, etc.	27 August 1990	March 1990
No. 97821	Filter spares	19 September 1990	July 1990

2. Analysis and valuation

411. The Panel finds that Invoices 97152, 97409 and 97441 relate to equipment that was delivered prior to 2 May 1990. The claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

412. The Panel finds that the equipment the subject of Invoice 97821 was delivered on or about 16 July 1990. Davy McKee presented the shipping documents required for payment on 19 September 1990. The Panel finds that payment was not made due to Iraq's invasion and occupation of Kuwait. The Panel finds that Davy McKee provided sufficient evidence in support of its claim.

413. The gross amount of Invoice 97821 is GBP 34,824. Applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the Panel deducts fifteen per cent of this amount (GBP 5,224), attributable to the advance payment. Accordingly the Panel recommends compensation in the amount of GBP 29,600 for Invoice 97821.

3. Recommendation

414. The Panel recommends compensation in the amount of USD 56,274 (GBP 29,600) for contract losses (equipment delivered).

B. Contract losses (equipment not shipped)

1. Facts and contentions

415. Davy McKee seeks compensation in the amount of USD 645,860 (GBP 339,723) in respect of equipment, which it asserts it could not ship to the project site in Iraq because of Iraq's invasion and occupation of Kuwait. Davy McKee calculates its claim as follows:

Table 8. Davy McKee's claim for contract losses (equipment not shipped)

Item	Claim amount (GBP)
Materials attempted but unable to ship	172,414
Materials held in store, not attempted to ship	179,916
Shipping related costs	1,073
Storage costs	3,000
Sub-total	356,403
Less advance payment (15 per cent)	(53,010)
Arithmetic error	36,330
Total	339,723

416. The Panel notes that Davy McKee has miscalculated its total loss According to the above figures and taking into account the arithmetic error, the amount claimed for equipment shipped is USD 576,793 (GBP 303,393), not USD 645,860 (GBP 339,723).

417. In respect of the "materials attempted but unable to ship", the evidence provided by Davy McKee reveals that Davy McKee had arranged for a container of spare parts to be shipped aboard the "Red Sea Europa" from Felixstowe to Aqaba on 21 July 1990. The ship left Felixstowe on 21 July 1990, however, on 9 August 1990, FPC advised Davy McKee that the ship had arrived at Aqaba but the container shipped by Davy McKee was not with the vessel. Subsequent correspondence from the shipper indicates that another container was erroneously shipped instead of Davy McKee's container. Davy McKee asserts that the materials could not be subsequently shipped because of Iraq's invasion and occupation of Kuwait.

418. In respect of the "materials held in store, not attempted to ship" Davy McKee indicates that it held the spare parts which it had obtained from various suppliers in compliance with its contractual obligations in Prestagrove Warehouse unable to be shipped "because of sanctions imposed".

419. Davy McKee asserts that it offered all of the spare parts for sale back to the original suppliers, and to second hand dealers and local scrap dealers, but primarily because the equipment was custom built for a particular project only one supplier, Warman International Limited, offered to repurchase the spare parts at an acceptable price.

420. On 16 November 1993 Warman International Limited repurchased the spare parts it had supplied to Davy McKee for GBP 2,500. On 1 December

1993, Davy McKee sold the remainder of the stored equipment to ZAK International Ltd. for a total amount of GBP 5,000.

2. Analysis and valuation

421. The Panel finds that both the "materials attempted but unable to ship", and the "materials held in store, not attempted to ship" could not be shipped to the project site because of the disruption to shipping caused by Iraq's invasion and occupation of Kuwait.

422. The Panel finds that Davy McKee provided sufficient evidence to support its claim.

423. The Panel finds that the amount of GBP 356,403 in respect of equipment not shipped is compensable in principle. However, the Panel finds that the amount of GBP 2,500 received from Warman International Limited and the amount of GBP 5,000 received from ZAK International Ltd. constitute compensation received from another source in respect of the equipment not shipped and should be deducted from any compensation recommended by the Panel.

424. Furthermore, the Panel finds that, applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the amount of GBP 53,010 in respect of the advance payment should be deducted from the recommended compensation amount.

3. Recommendation

425. The Panel recommends compensation in the amount of USD 562,534 (GBP 295,893) for contract losses (equipment not shipped).

C. Contract losses (site services)

426. Davy McKee seeks compensation in the amount of USD 657,223 (GBP 345,699) for site services, including (a) site services performed prior to Iraq's invasion of Kuwait and in respect of which no invoices have been rendered; and (b) site services performed by five of Davy McKee's personnel who, after Iraq's invasion of Kuwait, were detained at the site as hostages until they were allowed to leave for the United Kingdom on 21 December 1990.

427. In respect of item (a), Davy McKee asserts that it was not possible to submit invoices to FPC for signature as a result of Iraq's invasion and occupation of Kuwait.

428. In respect of item (b), Davy McKee asserts that "due to the hostilities it was not possible to have time-sheets signed by the Purchaser, such being a pre-condition to recovery under the Midland Bank Loan".

429. The claim includes GBP 30,135 for airfares for the employees. Davy McKee makes an allowance of GBP 44,712 in respect of the advance payment.

430. The Panel finds that Iraq's invasion and occupation of Kuwait prevented Davy McKee from obtaining payment for the site services. Davy McKee was unable to present the invoices or the timesheets to FPC for signature. This meant, in accordance with the terms of the contract, that Davy McKee could not obtain payment of the invoices.

431. The Panel finds that the value of the site services performed after 2 May 1990 is GBP 256,828. The Panel finds that the value of the airfares incurred after 2 May 1990 is GBP 11,611.

432. Furthermore, the Panel finds that, applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the amount of GBP 44,712 in respect of the advance payment should be deducted from the recommended compensation amount.

433. The Panel recommends compensation in the amount of USD 425,337 (GBP 223,727) for contract losses (site services).

D. Contract losses (materials supplied)

434. Davy McKee seeks compensation in the amount of USD 330,899 (GBP 174,053) for materials supplied and incorporated within the contract works prior to Iraq's invasion and occupation of Kuwait. Davy McKee asserts that no invoices were rendered in respect of the materials prior to the invasion, "since they would have been the subject of a claim for payment under the General Condition 34 of the Project Contract. Due to Iraq's invasion and occupation of Kuwait no such opportunity to submit a claim and cause payment to be effected will occur."

435. The Panel finds that Davy McKee did not substantiate its claim. The evidence provided by Davy McKee indicates that the materials the subject of the claim were outside the terms of the contract between Davy McKee and FPC. Davy McKee provided telexes to FPC confirming the price of the materials, but no evidence that the price was accepted by FPC or that FPC was obliged to pay for any materials supplied.

436. The Panel recommends no compensation for contract losses (materials supplied).

E. Contract losses (retention monies)

437. Davy McKee seeks compensation in the amount of USD 1,167,473 (GBP 614,091) for retention monies due upon presentation of a copy of the take-over/qualifying certificate.

438. Davy McKee states that due to Iraq's invasion and occupation of Kuwait, the taking over certificate was, and never will be, issued. Davy McKee asserts that the five employees who remained on site until 21

December 1990 would have been capable of commissioning the plant, however the non-availability of the spare parts and replacement items rendered this impossible. Davy McKee further asserts that, by 23 November 1990, the plant was running at 140 per cent of the process guarantee, even though erection and commissioning were not in strict compliance with the contract conditions.

439. The Panel finds that under the terms of the contract, the five per cent retention monies were payable upon the issue of the taking over certificate, which was due to be issued after 2 May 1990.

440. Applying the approach taken with respect to losses arising as a result of unpaid retentions set out in paragraphs 78 to 84 of the Summary, the Panel recommends compensation in the amount of GBP 614,091.

441. The Panel recommends compensation in the amount of USD 1,167,473 (GBP 614,091) for contract losses (retention monies).

F. Deduction of advance payment

442. Davy McKee states that it received an advance payment of GBP 2,039,400 from SEP on 25 October 1988. The evidence provided by Davy McKee indicates that between 20 February 1989 and 2 August 1990 it performed work to the value of GBP 12,003,015. A total of GBP 1,920,452 of this GBP 12,003,015 was withheld by SEP/FPC in repayment of the advance payment. This means that Davy McKee still retains GBP 118,948 of the advance payment.

443. In the above recommendations for compensation for (a) equipment delivered, (b) equipment not shipped, and (c) site services, the Panel recommended that a total of GBP 102,946 be deducted in respect of the advance payment.

444. Applying the approach with respect to advance payments set out in paragraphs 64 to 67 of the Summary, the Panel finds that Davy McKee must account for the remaining GBP 16,002 of the advance payment in reduction of its claim.

445. The Panel recommends that any award of compensation to Davy McKee be reduced by USD 30,422 (GBP 16,002) to reflect the advance payment retained by Davy McKee.

G. Deduction of amount received on ECGD guarantee

1. Facts and contentions

446. Davy McKee purchased "pre-credit risk cover" on its contract with SEP from the Export Credits Guarantee Department of the United Kingdom ("ECGD") on 22 March 1989. On 27 January 1993 it brought legal action against ECGD claiming GBP 890,981 under the guarantee for (a) equipment delivered, (b) equipment not shipped, (c) site services, and (d) materials supplied. On

18 November 1994, it settled the action with ECGD for GBP 250,000. The settlement agreement provided that Davy McKee should remain liable to account to ECGD for 59.74 per cent of any recoveries made by Davy McKee in respect of the subject matter of the action, up to a maximum amount of GBP 250,000. The settlement agreement did not specify to which part of the GBP 890,981 claimed the GBP 250,000 related.

2. Analysis and valuation

447. The Panel finds that Davy McKee received compensation from another source in respect of the first four loss types included in its claim, namely, (a) equipment delivered, (b) equipment not shipped, (c) site services, and (d) materials supplied. Davy McKee did not receive compensation from the ECGD in respect of the fifth loss type included in its claim, namely, retention monies.

448. The Panel recommends that any award of compensation to Davy McKee be reduced by USD 475,285 (GBP 250,000) to reflect the compensation paid by ECGD to Davy McKee.

H. Summary of recommended compensation for Davy McKee

449. Based on its findings regarding Davy McKee's claim, the following is the calculation:

Table 9. Recommended compensation for Davy McKee

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses:		
Equipment delivered	246,223	56,274
Equipment not shipped	645,860	562,534
Site services	657,223	425,337
Materials supplied	330,899	nil
Retention monies	1,167,473	1,167,473
Sub-total	3,047,678	2,211,618
Less amount received from ECGD		(475,285)
Less advance payment retained		(30,422)
Total	3,047,678	1,705,911

450. The Panel recommends compensation in the amount of USD 1,705,911. The Panel finds the date of loss to be 2 August 1990.

XVI. THE CLAIM OF ABB LUMMUS CREST INC.

451. ABB Lummus Crest Inc. ("ABB Lummus"), a United States corporation, was, at the time of Iraq's invasion of Kuwait, providing engineering and other services in relation to the PC-2 Project - a large petrochemicals production facility located 60 kilometres from Baghdad, Iraq. The facility was owned by the Ministry of Industry and Minerals of Iraq ("MIM"). The Technical Corps for Special Projects ("Techcorp"), an agency of MIM, was responsible for supervising the construction of PC-2.

452. The PC-2 Project was in the early stages of construction at the time of Iraq's invasion of Kuwait. Upon its completion, it was intended to comprise ethylene, styrene and polystyrene plants to produce a variety of petrochemical products to be used for plastics and synthetic fibre production for both domestic and export markets.

453. ABB Lummus seeks compensation in the total amount of USD 30,230,415 for contract losses, loss of profits, "project shutdown expenses", interest and claim preparation costs in connection with work undertaken on the PC-2 Project.

454. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to ABB Lummus' claim for interest.

455. The claim preparation cost element is in the amount of USD 90,000. Applying the approach taken with respect to claim preparation costs set out in paragraph 60 of the Summary, the Panel makes no recommendation for claim preparation costs.

456. The claim in respect of the polystyrene plant is also filed on behalf of Huntsman Chemical Corporation, a United States corporation ("Huntsman Chemical"). Huntsman Chemical was a signatory to a contract for the licensing of its proprietary polystyrene process with Techcorp. Documents submitted with the claim confirm that Huntsman Chemical has given its consent to ABB Lummus to file the claim on its behalf.

457. ABB Lummus' asserted losses arose out of four main agreements entered into between 31 July 1988 and 12 August 1989 in respect of the ethylene, styrene and polystyrene plants at the PC-2 Project. A summary of those agreements and a brief chronology of the PC-2 Project follows.

A. Summary of agreements

1. The Ethylene Contract

458. On 31 July 1988, ABB Lummus entered into a contract with Techcorp with respect to the construction of a 420,000 MTA ethylene plant at PC-2 (the "Ethylene Contract"). The Ethylene Contract covered basic and detailed engineering, procurement and construction supervision services, as well as training and commissioning advisory services.

459. The Ethylene Contract comprised two parts: (a) a technology licence; and (b) engineering and other services.

460. The Ethylene Contract became effective on 1 September 1988. It was amended by Supplemental Agreements dated 1 September 1988 (to place a "ceiling" on the number of manhours that were to be billed at the rates specified in Exhibit IV to the Ethylene Contract) and 31 July 1989 (to include provisions for the procurement and delivery of equipment and materials by ABB Lummus). The Ethylene Contract was further amended on 16 June 1990 to take account of the barter arrangement referred to in paragraphs 469 to 475.

2. The Supply Contract

461. On 28 December 1988, ABB Lummus and Techcorp entered into a related contract to supply materials for ten pyrolysis heater units to be constructed by Techcorp at the ethylene plant (the "Supply Contract").

3. The "credit crisis"

462. In November 1988, Techcorp opened the letter of credit required under the Ethylene Contract and the Supply Contract at the Central Bank of Iraq. The letter of credit (for an initial amount of USD 3,000,000) was confirmed by the Banca Nazionale del Lavoro ("BNL"), Atlanta branch. In January 1989, the letter of credit was increased to USD 30,000,000.

463. ABB Lummus exhausted this credit line in August 1989. Techcorp subsequently agreed to increase the credit line by a further USD 23,827,776. However, as a result of legal action between ABB Lummus and BNL, the increase was delayed until March 1990. The amended letter of credit (in the amount of USD 53,827,776) contained three separate and independent amounts for engineering services, materials for pyrolysis heaters and licence fees. ABB Lummus states that Techcorp stopped funding the letter of credit following the March 1990 amendment.

464. ABB Lummus states that the limits of the letter of credit allocated to engineering services and heater materials were immediately exhausted by ABB Lummus' receivables covering 1989 services and materials.

465. ABB Lummus further states that Techcorp's failure to continue funding the letter of credit constituted a material breach under both the Ethylene Contract and the Supply Contract. However, ABB Lummus decided to continue to supply engineering, procurement and construction supervision services and materials to the ethylene plant. The decision of ABB Lummus to continue supplying services and materials was made in reliance upon representations and assurances by Techcorp that it would provide ABB Lummus with the necessary security for payment of its future work through a barter arrangement using crude oil supplied through the State Oil Marketing Organisation of Iraq ("SOMO").

4. The Styrene Contract

466. On 10 August 1989, Techcorp and ABB Lummus signed an agreement under which ABB Lummus was engaged to prepare a Basic Design Engineering Package for a downstream styrene plant at PC-2 (the "Styrene Contract"). The Styrene Contract became effective on 5 September 1989.

5. The Polystyrene Contract

467. On 12 August 1989, Techcorp and Huntsman Chemical signed an agreement under which Techcorp was granted a licence to use Huntsman Chemical's proprietary polystyrene production process (the "Polystyrene Contract"). Under the Polystyrene Contract, ABB Lummus was designated as Huntsman Chemical's agent to prepare a Basic Design Engineering Package for the polystyrene plant at PC-2. ABB Lummus was also appointed Huntsman Chemical's agent for the collection of all amounts payable by Techcorp under the contract.

468. The Polystyrene Contract became effective on 1 September 1989.

6. Memorandum of Understanding (barter arrangement)

469. On 14 December 1989, Techcorp informed ABB Lummus by letter that MIM had obtained "Iraqi Higher Authority" to use Iraqi crude oil as barter for the completion of the Ethylene Contract. The management of ABB Lummus decided to complete the Ethylene and Supply Contracts in reliance on the assurances of the Government of Iraq.

470. The barter arrangement "arose out of Techcorp's lack of access, starting in the fall of 1989, to US dollars to make payments as required under the Ethylene Contract".

471. ABB Lummus appointed Chevron International Oil Company ("Chevron") as its oil lifting representative and to assist ABB Lummus in negotiating the terms of the barter arrangement. Between January and May 1990, extensive meetings took place and correspondence was exchanged between ABB Lummus, Techcorp, Chevron and SOMO in relation to the terms of the barter arrangement.

472. Between 13 and 16 June 1990, ABB Lummus and Techcorp met at Techcorp's headquarters in Baghdad for the purpose of executing the necessary agreements to bring the barter arrangement into operation. On 16 June 1990, ABB Lummus and Techcorp signed a Memorandum of Understanding setting out the terms of the barter arrangement. ABB Lummus states that Techcorp subsequently failed to comply with its obligations (a) to obtain the signatures of Chevron and SOMO to the Memorandum of Understanding, and (b) to supply sufficient oil to Chevron.

473. Under the terms of the barter arrangement, Techcorp was to make payments to ABB Lummus under the Ethylene Contract by means of a letter of

credit to be opened by Chevron in favour of SOMO and payable to ABB Lummus. The barter agreement was expressed to incorporate the terms of an oil sales contract entered into between Chevron and SOMO. SOMO, acting on Techcorp's behalf, was to supply crude oil to Chevron, acting on ABB Lummus' behalf. Chevron was to sell the oil on the world markets and deposit the net proceeds from such sales in a special letter of credit account at the Union Bank of Switzerland, London branch. ABB Lummus was to be the sole beneficiary of this letter of credit. The agreement provided for the supply of oil between June 1990 and May 1991 to generate proceeds in the amount of USD 138.6 million. ABB Lummus estimated that its work on the ethylene plant would end in May 1991 and this amount would have covered all the services it expected to perform under the Ethylene Contract.

474. On 16 June 1990, ABB Lummus and Techcorp also signed amendments to the Ethylene Contract substituting the barter terms for the original payment terms.

475. ABB Lummus states that the "barter arrangement was about to begin operations at the time of Iraq's invasion of Kuwait".

476. On 18 February 2000, the Panel issued a procedural order in which it requested ABB Lummus to provide further information concerning shipments of oil under the Memorandum of Understanding, an agreed "ceiling" on the number of man-hours to be invoiced under the Ethylene Contract and Techcorp's approval of invoices for work performed under the Ethylene Contract. ABB Lummus submitted its response to the procedural order on 17 March 2000.

B. Contract losses and loss of profits

1. Facts and contentions

477. ABB Lummus seeks compensation in the amount of USD 27,558,636 (amended from the original claim in the amount of USD 32,848,962) for contract losses and loss of profits. The individual items forming part of the claim for contract losses and loss of profits together with the amounts claimed and amount of compensation recommended by the Panel are set out in table 10, infra.

Table 10. ABB Lummus' claim for contract losses and loss of profits

Loss item	Amount claimed (USD)	Recommended compensation (USD)
Engineering services rendered under the Ethylene Contract	14,265,990 (amended from USD 14,564,316)	6,085,661
"Loss of profits" under the Ethylene Contract	2,870,000 (amended from USD 7,862,000)	nil
Materials supplied and construction supervisory services rendered under the Supply Contract	532,646	65,800
Unpaid licence fees under the Styrene Contract	4,600,000	nil
Engineering services rendered under the Styrene Contract	40,000	nil
Unpaid licence fees under the Polystyrene Contract	5,250,000	nil
Total	27,558,636	6,151,461

2. Analysis and valuation

478. The Panel's analysis and valuation of each of the individual items forming part of the claim for contract losses and loss of profits is set out in the following section.

479. It is appropriate to begin by addressing certain specific arguments upon which ABB Lummus relies. The first is an argument based on the clauses in the contracts with Techcorp which deal, respectively, with the outbreak of war and frustration. Those clauses are as follows:

> "Outbreak of war and termination
>
> If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in any part of the world which, whether financially or otherwise, materially affects the execution of the Works the Contractor shall, unless and until the Contract is terminated under the provisions in this clause contained, use its best endeavours to complete the execution of the Works, provided always that the Employer shall be entitled, at any time after such outbreak of war, to terminate this Contract by giving notice in writing to the Contractor, and upon such notice being given this Contract shall ... terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

> If the Contract shall be terminated as aforesaid the Contractor shall be paid by the Employer (in so far as such amounts or items shall not have already been covered by payments on accounts made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract ..."
>
> "Frustration
>
> In the event of the Contract being frustrated the sum payable by the Employer to the Contractor in respect of work executed shall be the same as that which would have been payable under [the outbreak of war and termination clause] hereof if the Contract had been terminated under the provisions of [that clause]."

480. ABB Lummus asserts that Techcorp insisted on the inclusion of these clauses in each of the Ethylene Contract, the Supply Contract, the Styrene Contract and the Polystyrene Contract.

481. ABB Lummus argues that the effect of the clauses is, inter alia, to entitle ABB Lummus to recover for all unreimbursed work and deliveries under its contracts without limitation as to the dates on which such work and deliveries were performed. By this argument, ABB Lummus seeks to avoid what it presumably recognises as the serious jurisdictional objection to the recovery, in proceedings before the Commission, of what might conveniently be called "old debt". (See the Summary at paragraphs 68 to 77).

482. For the reasons stated in paragraphs 103 to 110 of the Summary, the Panel rejects this argument.

483. ABB Lummus also argues that "all claims of ABB Lummus, regardless of their date, fall within the UNCC's jurisdiction". In support of this argument, ABB Lummus states that the Memorandum of Understanding dated 16 June 1990, which laid down the terms of the barter arrangement, had its origin in the notification by the Iraqi Higher Authority given on 14 December 1989. In that notice, the Iraqi Higher Authority approved "funds from oil sales to cover the requirements associated with the progress of work on the Ethylene unit". ABB Lummus argues that the Memorandum of Understanding "was structured in such a way that the unavailability of foreign currency would not have impeded its purpose in any way", and that this therefore circumvents the "old debt" rule. (See the Summary at paragraphs 68 to 77).

484. For the reasons stated in paragraphs 109 to 110 of the Summary, the Panel rejects this argument.

485. ABB Lummus deploys a further argument that its claims under the Ethylene Contract, the Styrene Contract and the Polystyrene Contract fall within the jurisdiction of the Commission regardless of when the work under

those contracts was performed, as its performance under the relevant contracts was "indivisible" in nature.

486. In support of this argument, ABB Lummus refers to the conclusion reached by the "E1" Panel of Commissioners in the Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of "E1" Claims (S/AC.26/1999/13). However, the "E1" Panel's conclusion in its Report and Recommendations concerned an exceptional factual situation relevant to one particular claim considered by that Panel. That situation is not replicated in ABB Lummus' claim. Each of the Ethylene Contract, the Styrene Contract and the Polystyrene Contract contained detailed provisions stating when the licence fees and other amounts payable fell due for payment. In the case of the licence fees, payment fell due upon the completion of specific milestones described more fully in the contracts. In the case of other services provided, each of the contracts provided for ABB Lummus (or Huntsman Chemical in the case of the Polystyrene Contract) to submit its invoice within 15 days of the end of the month for the costs incurred during such month. These provisions demonstrate that the obligations of ABB Lummus under the Ethylene Contract, the Styrene Contract and the Polystyrene Contract, and Huntsman Chemical under the Polystyrene Contract, were "divisible" in nature. Indeed, it seems inconceivable that ABB Lummus would have agreed to any of these contracts on any other basis than one on which it was reimbursed from time to time for its services. Accordingly, it seems quite clear to the Panel that these contracts do not satisfy the criteria of "indivisibility" used by the "E1" Panel.

(a) Engineering services rendered under the Ethylene Contract

487. The claim is for labour costs, non-payroll costs and vendor engineering services rendered under the Ethylene Contract, which have allegedly not been paid by Techcorp.

488. ABB Lummus states that the letter of credit provided by Techcorp as payment security under the Ethylene Contract was sufficient to cover ABB Lummus' engineering, procurement and construction management services through December 1989 and part of January 1990. According to ABB Lummus, Techcorp failed to provide letter of credit coverage for any subsequent ABB Lummus services.

489. However, in reliance on Techcorp's representations that future services would be protected by an oil lift barter arrangement, ABB Lummus continued to provide services under the Ethylene Contract until 2 August 1990. On 14 December 1990, ABB Lummus received official notification from Techcorp that MIM had obtained "Iraqi Higher Authority" to use Iraqi crude oil as barter for the completion of the Ethylene Contract.

490. The claim includes an amount claimed on behalf of ABB Lummus' Brazilian subsidiary, Setal Lummus Engenharia e Construcoes S.A. ("SETAL"),

to whom ABB Lummus sub-contracted part of the engineering work under the Ethylene Contract. Documents submitted with the claim confirm that SETAL has given its consent to ABB Lummus to file the claim on its behalf.

491. The Ethylene Contract was amended by a Supplemental Agreement dated 1 September 1988 pursuant to which the parties agreed to place a "ceiling" on the number of engineering and procurement manhours that were to be billed at the rates specified in Exhibit IV to the Ethylene Contract. The Supplemental Agreement provided for additional manhours to be invoiced at the single rate of USD 40 per hour if the agreed ceiling of 440,000 manhours was exceeded.

492. The claim is for amounts included in nine invoices dated between 11 February and 18 September 1990 ("invoice nos. 1-9"). Eight of the invoices relate to work performed by ABB Lummus between 1 January and 17 August 1990. The remaining invoice, dated 17 February 1990, relates to the second instalment of the technology licence fee payable by Techcorp under the Ethylene Contract.

493. The Panel finds that Techcorp is an agency of the State of Iraq. The Panel finds that the asserted losses in respect of invoice nos. 1-4 and 9 (in the total amount of USD 7,466,350) relate to work performed between January and April 1990, i.e., prior to 2 May 1990. The claim for these unpaid invoices is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for invoice nos. 1-4 and 9.

494. The Panel finds that the asserted losses in respect of invoice No. 5 (in the total amount of USD 1,574,127) relate to work that was performed between 21 April and 18 May 1990. The claim for unpaid amounts in respect of work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Having reviewed the evidence provided by ABB Lummus, the Panel was able to identify the value of the work performed subsequent to 2 May 1990 as USD 860,148, and recommends compensation in this amount in respect of invoice No. 5.

495. The Panel finds that the asserted losses in respect of invoice nos. 6-8 (in the total amount of USD 5,225,513) relate entirely to work that was performed between June and August 1990, i.e., subsequent to 2 May 1990. The claim for these unpaid invoices is therefore within the jurisdiction of the Commission. On the evidence provided, the Panel is satisfied that ABB Lummus is entitled to payment of invoice nos. 6-8 and recommends compensation in the amount of USD 5,225,513.

(b) "Loss of profits" under the Ethylene Contract

496. ABB Lummus states in the Statement of Claim:

> "Due to the abrupt termination of the ethylene project as a result of Iraq's invasion of Kuwait, ABB Lummus lost profits which it would have realized if its work under the Ethylene Contract had been completed".

497. ABB Lummus states that "the claim for lost profits represents the difference between the predicted total gross profit margin on the completed project and the gross profit margin on the amounts committed as of 17 August 1990".

498. The claim comprises (a) the unpaid instalments of the technology licence fee payable by Techcorp under the Ethylene Contract (the third and fourth instalments in the aggregate amount of USD 1,000,000) and (b) loss of profits (USD 2,042,000). ABB Lummus discounted the total amount of its claim by 15 per cent "to reflect the time value of money".

(i) Unpaid licence fees

499. ABB Lummus states that the third and fourth instalments of the technology licence fee under the Ethylene Contract fell due upon the occurrence of certain events as set out below.

500. Under clause 6.3 of the Ethylene Contract, (a) the third instalment fell due "30 days after successful demonstration test (as defined in Article 12)", and (b) the fourth instalment fell due "30 days after the plant has attained design capacity in a production mode (excluding the acceptance test) or 54 months after the date of signing the contract, whichever comes first".

501. Clause 12.3 of the Ethylene Contract reads, "If the acceptance tests are not completed ... for a period of not more than 60 days by force majeure ... payment [of the licence fee] related to completion of this test shall become immediately due and payable". ABB Lummus asserts that Iraq's invasion of Kuwait constituted a force majeure event and that the final two licence payments fell due on 2 August 1990.

502. For the reasons stated in paragraphs 482 to 486, supra, and applying the approach set out in paragraphs 103 to 110 of the Summary, the Panel rejects ABB Lummus' arguments. The events referred to in clause 6.3 of the Ethylene Contract never occurred. The Panel further finds that ABB Lummus did not issue invoices in respect of the third and fourth instalments. Accordingly, ABB Lummus did not become entitled to payment of the amounts claimed. The Panel recommends no compensation for unpaid licence fees.

(ii) Loss of profits

503. In support of its claim for loss of profits, ABB Lummus provided a number of documents, including project financial tabulations for the period 20 January 1989 to 17 August 1990 as well as a "Report on Lost Profits for the PC-2 Ethylene Project" prepared by KPMG. Despite a request to provide copies of the audited and unaudited financial statements and other financial information in respect of its Iraqi operations, ABB Lummus provided only consolidated financial statements for Asea Brown Boveri Inc. for the period 31 December 1989 to 31 December 1993.

504. It is clear from the documents provided by ABB Lummus that ABB Lummus' claim for lost profits expected to be earned on the PC-2 Project does not take into account the "risk margin" for the project. (See paragraphs 111 to 119 of the Summary). It is clear that certain risks would have eventuated. For example, ABB Lummus' expected profits would have been reduced by administrative expenses, such as interest, commission payable to Chevron under the Compensation Agreement dated 29 June 1990 and other financial expenses, which could have resulted in a net loss to ABB Lummus. The Panel finds that the evidence provided by ABB Lummus is insufficient to enable it to identify the profits that would have been earned on the project with any reasonable certainty. ABB Lummus failed to demonstrate that its work on the PC-2 Project would have been profitable as a whole.

505. The Panel finds that ABB Lummus failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation for loss of profits.

(c) Materials supplied and construction supervisory services rendered under the Supply Contract

506. ABB Lummus states that it "relied on the oil lift barter agreement ... while incurring additional expenses for materials for pyrolysis heaters and in performing additional construction supervisory services under the Supply Contract".

507. The schedule of unpaid invoices provided by ABB Lummus indicates that the heater materials were supplied in March 1990 and the installation of the heaters took place between May and August 1990.

508. The claim for materials supplied and services rendered prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, only the contract losses relating to materials supplied and services rendered subsequent to 2 May 1990 are compensable. From the documentation provided by ABB Lummus, the Panel was able to

identify the value of the materials supplied and services rendered subsequent to 2 May 1990 and recommends compensation in the amount of USD 65,800 for materials supplied and services rendered under the Supply Contract.

(d) Unpaid licence fees under the Styrene Contract

509. Under the Styrene Contract, ABB Lummus' fees for basic design engineering services were included in a lump sum licence fee in the amount of USD 4,600,000. All instalments were payable in United States dollars and were due within 30 days from the receipt of the invoice.

510. The licence fee under the Styrene Contract was payable in five instalments. ABB Lummus states that it completed the work and invoiced Techcorp in relation to the first three instalments (in the aggregate amount of USD 3,050,000).

511. The fourth instalment (in the amount of USD 1,025,000) was payable by Techcorp upon delivery by ABB Lummus of the Basic Design Engineering Package. ABB Lummus states that it completed the Basic Design Engineering Package, but did not give it to Techcorp "due to non-payment of previous instalments".

512. ABB Lummus states that the fifth (final) instalment (in the amount of USD 525,000) represented the "profit component" under the Styrene Contract. It fell due at the latest on 5 September 1992, i.e., 36 months from the effective date of the Styrene Contract.

513. No invoices were issued for the fourth and fifth instalments.

514. The Panel finds that the asserted losses in respect of the first three instalments relate entirely to work that was performed prior to 2 May 1990. The claim for these unpaid licence fees is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

515. The Panel finds that ABB Lummus made a commercial decision not to give the Basic Design Engineering Package to Techcorp and that it did not issue invoices in respect of the fourth and fifth instalments. Accordingly, ABB Lummus did not become entitled to payment of the amounts claimed. The Panel recommends no compensation for unpaid licence fees under the Styrene Contract.

(e) Engineering services rendered under the Styrene Contract

516. Pursuant to an amendment to the Styrene Contract, ABB Lummus was engaged by Techcorp to prepare an additional engineering report relating to

a proposed change to the styrene plant. The work was not covered by the licence fee and was payable separately in the amount of USD 40,000. ABB Lummus states that it prepared this report and handed it to Techcorp, but was not paid for it.

517. In support of its claim, ABB Lummus provided copies of correspondence with Techcorp. This correspondence indicates that the engineering services were rendered in late 1989.

518. The Panel finds that the contract losses alleged by ABB Lummus relate entirely to work that was performed prior to 2 May 1990. The claim for engineering services rendered under the Styrene Contract is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for engineering services rendered under the Styrene Contract.

(f) Unpaid licence fees under the Polystyrene Contract

519. The Polystyrene Contract entered into between Techcorp and Huntsman Chemical designated ABB Lummus its agent for collection of amounts payable to Huntsman Chemical. The claim for unpaid licence fees under the Polystyrene Contract is also filed on behalf of Huntsman Chemical.

520. The Polystyrene Contract provided for payment of a lump sum licence fee of USD 6,000,000. This fee covered both ABB Lummus' services in preparing the Basic Design Engineering Package and Techcorp's right to use the technology of Huntsman Chemical and ABB Lummus in the construction and operation of the plant. The licence fee was payable in six instalments. ABB Lummus states that it received payment in respect of the first instalment (in the amount of USD 750,000) only.

521. ABB Lummus states that the work in respect of the second instalment (in the amount of USD 725,000) was performed and Techcorp was invoiced for this work. The invoice for this work is dated 23 January 1990.

522. The third and fourth instalments (in the aggregate amount of USD 2,925,000) were payable by Techcorp upon the issue of process piping and instrument diagrams and the delivery of the Basic Design Engineering Package. ABB Lummus states that the relevant work was completed, however it "did not deliver all of this information to Techcorp due to non-payment of earlier instalments". No invoices were issued for the third and fourth instalments.

523. ABB Lummus states that the fifth and sixth (final) instalments (in the aggregate amount of USD 1,600,000) represented the "profit component" under the Polystyrene Contract. They fell due at the latest on 1 September 1992, i.e., 36 months from the effective date of the Polystyrene Contract.

524. The Panel finds that the asserted losses in respect of the second instalment relate entirely to work that was performed prior to 2 May 1990. The claim for this unpaid licence fee is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

525. The Panel finds that ABB Lummus made a commercial decision not to give the Basic Design Engineering Package to Techcorp and that it did not issue invoices in respect of the third, fourth, fifth and sixth instalments. Accordingly, ABB Lummus did not become entitled to payment of the amounts claimed. The Panel recommends no compensation for unpaid licence fees under the Polystyrene Contract.

3. Recommendation

526. The Panel recommends compensation in the amount of USD 6,151,461 for contract losses and loss of profits.

C. "Shutdown expenses"

1. Facts and contentions

527. ABB Lummus seeks compensation in the amount of USD 2,581,779 (amended from the original claim in the amount of USD 3,366,648) for expenses incurred in the shutdown of the ethylene plant of the PC-2 Project. The claim is for costs allegedly incurred by ABB Lummus and its Brazilian subsidiary, SETAL. The costs allegedly incurred by ABB Lummus are labour costs and non-payroll home office costs for the period 3 August 1990 to 22 March 1991 (USD 1,865,114). The costs allegedly incurred by SETAL are "layoff costs" relating to 64 employees and costs relating to the "non-productive time of PC-3 employees" (USD 716,665).

528. In its response to the article 34 notification, ABB Lummus withdrew its claim for all items incurred after March 1991 as well as its entire claim for "shutdown expenses" in relation to the Supply Contract.

529. In support of its claim for shutdown expenses in relation to the Ethylene Contract, ABB Lummus relies on the termination and frustration provisions of the Ethylene Contract. The frustration clause (clause 18) provides that, in the event of the Ethylene Contract being frustrated, ABB Lummus was entitled to be paid the amounts set out in the termination clause (clause 17), as if the Ethylene Contract had been terminated under the provisions of that clause. The termination clause of the Ethylene Contract provides that ABB Lummus was entitled to be paid the "cost of materials and services normally covered in this agreement and directly related to the orderly shutdown of the work". The relevant provision

further states that the shutdown costs shall "in no event ... exceed thirty (30) calendar days from the date of termination, unless otherwise agreed by the parties".

530. The documentation provided by ABB Lummus in support of its claim indicates that ABB Lummus gave notice to Techcorp under the frustration clause of the Ethylene Contract on 10 August 1990. The notice refers to ABB Lummus' inability to fulfil its obligations under the Ethylene Contract with effect from 2 August 1990. Techcorp's reply dated 12 August 1990 requests ABB Lummus to demobilise its staff "in a very short time, but ... in such a manner that will help quick mobilisation as soon as circumstances permit".

531. The shutdown costs were included in nine invoices dated from 18 September 1990 to 11 April 1991, each of which refer to clause 18 of the Ethylene Contract. ABB Lummus states that none of the invoices were submitted to Techcorp "because Iraq's invasion of Kuwait made it impossible for an ABB Lummus representative to deliver the invoices to Techcorp in Baghdad, which was the practice under the PC-2 Agreements ... and mail was never used on the Project because Iraqi mail was unreliable".

2. Analysis and valuation

532. The Panel finds that pursuant to the notice given by ABB Lummus on 10 August 1990, (stated to be effective as of 2 August 1990), and the provisions of clauses 17 and 18 of the Ethylene Contract, ABB Lummus became entitled under the Ethylene Contract to the costs incurred in shutting down the ethylene plant for the 30 calendar day period from the date of termination of the Ethylene Contract (2 August 1990).

533. ABB Lummus provided a significant amount of documentation in support of the expenses allegedly incurred, including the nine invoices for shutdown expenses and back-up documentation for the costs listed therein. A review of the invoices and back-up documentation indicates that some items, (such as "non-payroll costs incurred in June and July 1990"), do not directly relate to the shutdown of the ethylene plant, and are, therefore, not compensable. Based on the material before it, the Panel finds that ABB Lummus incurred expenses directly related to the shutdown of the ethylene plant between 2 August and 2 September 1990 with a value of USD 811,305, and that these expenses are compensable.

534. With respect to the shutdown expenses claimed on behalf of SETAL relating to the "layoff costs" of 64 employees, (including vacation and "13th month", notice period and retirement fund allowances), and the "non-productive time of PC-3 employees", the Panel finds that ABB Lummus failed to provide evidence that these expenses were directly related to the shutdown of the ethylene plant. The Panel, therefore, recommends no compensation for these expenses.

535. The Panel notes that, in relation to those expenses for which it recommended compensation, it was able to identify a clear line of causation between the instruction to shut down the ethylene plant and the invoices supplied. The provisions of the Ethylene Contract referred to above gave rise to an entitlement on the part of ABB Lummus to those expenses that (a) were "directly related" to the shutdown of the ethylene plant, and (b) complied with the temporal restrictions set forth in clauses 17 and 18.

3. Recommendation

536. The Panel recommends compensation in the amount of USD 811,305 for shutdown expenses.

D. Summary of recommended compensation for ABB Lummus

537. Based on its findings regarding ABB Lummus' claim, the Panel recommends compensation in the amount of USD 6,962,766. The Panel finds the date of loss to be 2 August 1990.

XVII. THE CLAIM OF JOHN BROWN, A DIVISION OF TRAFALGAR HOUSE, INC.

538. John Brown, a Division of Trafalgar House, Inc. ("John Brown") is a corporation existing under the laws of the United States of America. In this claim, John Brown is maintaining a claim assigned to it by Davy McKee Corporation ("Davy McKee"), another corporation existing under the laws of the United States of America. On January 1990, Davy McKee entered into a contract with the Al Furat Petroleum Company ("Al Furat"), a Syrian joint-stock company. The contract provided for the construction of the Omar Phase II Project in Syria. The Project was designed to upgrade and increase oil production at Syria's Omar oil fields (the "Omar II project").

539. On 1 November 1993, Davy McKee Corporation assigned all claims that it may have arising out of the Omar Phase II Project, to John Brown. John Brown seeks compensation in the total amount of USD 10,065,777 for contract losses, including vendor costs, transportation costs, prolongation costs, and liquidated damages, claim preparation costs, and interest. In the following section, references to "John Brown" include references to Davy McKee.

540. The claim preparation cost element is in the amount of USD 263,653. Applying the approach taken with respect to claim preparation costs set out in paragraph 60 of the Summary, the Panel makes no recommendation for claim preparation costs.

541. The interest element is in the amount of USD 2,159,531. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to John Brown's claim for interest.

A. Vendor costs

1. Facts and contentions

542. John Brown seeks compensation in the amount of USD 663,927 for the net increase in "vendor costs" incurred on the Omar II project.

543. Under the terms of the contract, John Brown was required to provide on-site vendor representatives for the final commissioning and start-up of the project equipment. In a "vendor report account" dated 24 July 1990, John Brown estimated that, in order to comply with its contractual obligations, it would require 15 vendor representatives to be present on site for a total of 332 man days.

544. John Brown asserts that, from 2 August 1990 onwards, the vendors began to withdraw their personnel and to refuse to send their representatives to the project site because of fears for their safety. John Brown mobilised its own "less-expert and smaller" commissioning team, but these personnel did not have the skills or experience to perform all of the work required. John Brown experienced problems with the commissioning as a result.

545. John Brown calculates its claim for additional "vendor costs" as the difference between John Brown's estimate of the vendor costs prior to Iraq's invasion and occupation of Kuwait and the actual vendor costs which it incurred. In the case of 12 of a total of 18 vendors which John Brown states it required at site, either no additional costs were incurred, or a net saving was made, because the vendors refused to send a representative. However, in the case of six of the 18 vendors, additional costs were incurred because of the problems experienced with the equipment. In the case of these six vendors, John Brown required the vendors to attend the project site for a greater number of days than originally estimated.

2. Analysis and valuation

546. The evidence provided by John Brown indicates that a significant number of the equipment vendors would not send their representatives to the project site at the time that they were required by John Brown because of their concerns about the safety of their personnel in the hostile environment created by Iraq's invasion and occupation of Kuwait.

547. However, while this provides a prima facie case to support the claim, there are considerable difficulties. First, so far as the Panel can determine from the documentation placed before it, there was no contractual obligation on the vendors to send their representatives at all. It appears to have been left to be arranged on an ad hoc basis. John Brown seeks to justify this on the basis of the usage of the industry. In the Panel's opinion, it is not sufficient to simply assert such a usage. It needs to be established by way of evidence.

548. Next, claims based on the difference between the estimate for commissioning costs - which is what is discussed in the present case - and the actual event are notoriously difficult to evaluate; and the commissioning costs are usually under-estimated. In the present case, the estimate for the commissioning costs is contained in the one-page "vendor report account" dated 24 July 1990 referred to at paragraph 543, supra.

549. In seeking to put a figure to its claim, John Brown acknowledges the problem of under-estimation. In calculating the vendor costs for each of the 18 vendors, John Brown increased the estimate of man-days contained in the "vendor report account" dated 24 July 1990, to allow "for extra work and any other factors that are the responsibility of [John Brown]". While the Panel recognises the good faith aspect of such an attempt to put a value on the claim, the exercise itself highlights the difficulty in making a true valuation of any over-run of such cost.

550. The Panel finds that there is no material on the basis of which the Panel can exclude the possibility of other contributing factors to the vendor costs. For example, in Progress Report No. 8 dated 31 August 1990, John Brown recorded that the "area of greatest concern" was the "receiving of data sheets, detail drawings and vendor information on or before

instrumentation arrival". On the evidence provided by John Brown, this fault of the vendors was unrelated to Iraq's invasion and occupation of Kuwait.

551. Indeed, on the evidence before the Panel, it is quite possible that the problems in Iraq and Kuwait provided an excuse on the basis of which the vendors were able to refuse to make their representatives available when there were other, commercial, reasons for withholding assistance at that particular time.

552. The Panel finds that John Brown failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait.

3. Recommendation

553. The Panel recommends no compensation for vendor costs.

B. Transportation costs

554. John Brown seeks compensation in the amount of USD 1,152,336 for the increase in the cost of transportation of equipment to the Omar II project site due to Iraq's invasion and occupation of Kuwait. The claim is made up of "additional air transportation" (USD 1,081,488) and "increase in air freight costs" (USD 70,848).

(a) Additional air transportation

555. John Brown seeks compensation in the amount of USD 1,081,488 for the increased proportion of air freight to ocean freight used on the Omar II project allegedly as a result of Iraq's invasion and occupation of Kuwait.

556. John Brown asserts that the intention at the time of tender for the Omar II project was for all equipment and materials to be transported to the job site by surface transport, with air transport to be used only in special cases. However, when the vendors refused to send their representatives, causing delays on the project and the threat of liquidated damages, John Brown attempted to accelerate the production schedule by transporting a much greater proportion of equipment and materials by air freight than it would have otherwise.

557. The Panel finds that John Brown failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. The evidence provided by John Brown shows that transport by air, instead of by sea, was not a direct result of Iraq's invasion and occupation of Kuwait. Instead, it resulted from the business decision taken by John Brown to attempt to reduce the delays on the Omar II project by increasing the proportion of equipment transported to the project site by air.

558. An internal John Brown memorandum dated 24 January 1991 clearly demonstrates that Iraq's invasion and occupation of Kuwait did not result in the necessity to use air freight. The memorandum provides: "in view of

[problems in transporting equipment by air] we may be better off sending our cargo via ocean freight until the Iraqi situation quiets down. Ocean movement does take 30 days, but this would be the same as having our cargo sit in some airport in Europe".

559. The Panel recommends no compensation for additional air transportation costs.

(b) Increase in air freight costs

560. John Brown seeks compensation in the amount of USD 70,848 for "increase in air freight costs". This amount is further described as "extra-ordinary expenses", i.e., "costs incurred by [John Brown] for miscellaneous additional charges levied for Royalty payment for air charter, inland freight charges Amman to Damascus and other transport costs, all paid in order to move freight during the period in question".

561. The Panel finds that the increase in air freight costs was not directly caused by Iraq's invasion and occupation of Kuwait. It was caused by John Brown's decision to reduce the delays on the Omar II project by utilising air freight instead of ocean freight.

562. The Panel recommends no compensation for increase in air freight costs.

C. Prolongation costs

1. Facts and contentions

563. John Brown seeks compensation in the amount of USD 3,480,656 for the costs incurred because of the prolongation of the Omar II project. The contract nominated 28 January 1991 as the date of issue of the provisional acceptance certificate, but it was not issued until 4 December 1991. John Brown asserts that 3.8 months of the total 9.25 month delay on the Omar II project was due to Iraq's invasion and occupation of Kuwait.

564. John Brown formulates its argument that 3.8 months of the total 9.25 months delay is attributable to Iraq's invasion and occupation of Kuwait as follows:

a. Prior to the invasion, John Brown did not envisage that commissioning would pose any particular problems;

b. Progress was generally on target in August 1990;

c. The vendors refused to send their representatives to the project site over the period August 1990 to March 1991;

d. The absence of vendor representatives prevented the proper commissioning and ready for acceptance testing of many items of equipment;

e. The Omar III project (performed by Davy McKee between September 1992 and December 1993), with full vendor support and using substantially the same Davy McKee management personnel, was completed "precisely on time".

565. John Brown asserts that it lost the following days each month because of the vendors' refusal to come to the project site (total 115.24 = 3.8 months).

Table 11. John Brown's claim for prolongation costs

Month	Days lost	Percentage of days lost as compared to total days in month
July 1990	0.00	0%
August 1990	1.55	5%
September 1990	3.00	10%
October 1990	8.14	25%
November 1990	15.00	50%
December 1990	27.90	90%
January 1991	27.90	90%
February 1991	21.00	75%
March 1991	7.75	25%
April 1991	3.00	10%
May 1991	0.00	0%
Total	115.24	

566. To calculate its prolongation costs, John Brown:

a. Determines the amounts actually spent in respect of all of its project costs (see table 12, infra, for list of costs);

b. Determines the "cost shift" of each of the project costs, i.e., the difference between the costs actually incurred and the original estimate of the costs, for each month from August 1990 to April 1991;

c. Applies the percentage figure in table 11, supra, to determine how much of the "cost shift" is attributable to Iraq's invasion and occupation of Kuwait.

567. John Brown concludes that the prolongation costs due to Iraq's invasion and occupation of Kuwait are as follows:

Table 12. John Brown's claim for prolongation costs

Project cost	Amount (USD)
Head office salaries	1,364,936
Out of pocket expenses	663,385
Field craft hourly labour	17,760
Indirect material expense	650,230
Other home office costs	518,676
Damascus office accommodation	50,448
Damascus office vehicles	132,886
Frustration insurance	82,335
Total	3,480,656

2. Analysis and valuation

568. The Panel finds that John Brown did not substantiate its claim for prolongation costs.

569. The assessment of the time to be allocated to a specific event occurring in the course of a large project is a very complex exercise. One would normally expect it to be done by the use of a computer programme. This would ususally compare the actual development of the works with the contract based programme. The aim is to identify the excusable and the culpable delays. Such an assessment needs to consider the so-called critical path of the project; the related milestones of the programme; and the corresponding resources (labour and equipment). Such a method is generally considered acceptable provided that a proper causal link is identified; a convincing analysis supported by sufficient evidence is detailed for each delay; and the various delays (and acceleration measures if any) are adequately consolidated. On a base such as this, the costs attributable to the extension of time can be correctly calculated.

570. The Panel is not convinced that 3.8 months of the total 9.25 month delay was caused by Iraq's invasion and occupation of Kuwait. The article 34 notification requested further explanation of the method by which John Brown calculated the lost man-days per month (see table 11, supra). In its article 34 response, John Brown merely stated that "the percentages included in "Time Lost Each Month" are the best effort of both the Claimant and its advisor Dal-Sterling at reasonably rationalising the consequences of Iraq's invasion and occupation of Kuwait".

571. The evidence provided by John Brown describes other factors which contributed to the total 9.25 month delay on the project. These included

technical problems with some of the equipment, an employee strike at one of the vendors' sites, and the Ramadan Festival (although the effect of this was described as nominal). The Panel accepts that the refusal of the vendors to send its representatives to the project site caused some delay on the project. However, the Panel is not convinced that other problems, unrelated to Iraq's invasion and occupation of Kuwait, would not have caused a delay as great as 9.25 months, even if Iraq's invasion and occupation of Kuwait had not occurred.

572. In support of its contention that the Omar II project was delayed for 3.8 months by Iraq's invasion and occupation of Kuwait, John Brown places special emphasis on the completion of the Omar III project "precisely on time". John Brown asserts that Omar III was "as technically difficult as Omar II and more difficult to integrate with existing facilities".

573. The Panel is not convinced that the completion of the Omar III project on time supports John Brown's argument that 3.8 months of the total delay of 9.25 months was caused by Iraq's invasion and occupation of Kuwait. On the evidence provided by John Brown an equally plausible explanation is that John Brown experienced no delays on the Omar III project because it could utilise its experience on the Omar II project in dealing with any problems which arose.

3. Recommendation

574. The Panel recommends no compensation for prolongation costs.

D. Liquidated damages

1. Facts and contentions

575. John Brown seeks compensation in the amount of USD 2,345,674 for liquidated damages levied by Al Furat against John Brown.

576. John Brown states that "as a result of the delays in the achievement of the Ready for Acceptance testing dates written into the Contract, AFPC has calculated a penalty of USD 4,775,730.10 as delay penalties or damages and has presented such penalty to [Davy McKee Corporation]. In practice Al Furat has withheld approximately half of this sum by not paying invoices submitted by [Davy McKee Corporation] for the release of retention sums and for Contract payments for executed work".

577. John Brown claims the "actual amount withheld by AFPC for Omar Phase II", which it asserts is equivalent to USD 2,345,674 as at 9 March 1994.

2. Analysis and valuation

578. The Panel finds that John Brown did not provide sufficient evidence that the "liquidated damages" withheld by Al Furat were a direct result of Iraq's invasion and occupation of Kuwait. John Brown acknowledges that only 3.8 months of the delay on the Omar II project was caused by the

invasion, but it makes no attempt to apportion the liquidated damages. Also, the evidence indicates that the final amount withheld by Al Furat was in accordance with a settlement negotiated by Al Furat and John Brown. The settlement appears to have settled all of John Brown's claims under the Contract. *Prima facie* once a claimant's claims are settled, no claim remains to be pursued. In that event it is necessary to review the filed material to ascertain if there is any basis which displaces the *prima facie* view. Absent such material, John Brown has not established a loss and, therefore, the Panel is unable to recommend compensation.

3. Recommendation

579. The Panel recommends no compensation for liquidated damages.

E. Summary of recommended compensation for John Brown

580. Based on its findings regarding John Brown's claim, the Panel recommends no compensation.

XVIII. THE CLAIM OF OVERSEAS BECHTEL, INC.

581. Overseas Bechtel, Inc. ("Overseas Bechtel"), a United States corporation, is a wholly owned subsidiary of Bechtel Group Inc., an international construction company based in San Francisco.

582. On 20 July 1988, Overseas Bechtel entered into a Technical Services Agreement ("TSA") with the Technical Corps for Special Projects, Ministry of Industry, Iraq ("Techcorp"). The agreement provided for the provision of engineering, financing, procurement, project management, construction and other related services in relation to the PC-2 Project - a large petrochemicals production facility located 60 kilometres from Baghdad, Iraq.

583. Overseas Bechtel seeks compensation in the total amount of USD 4,915,980 for unpaid amounts under the TSA, loss of profits, payment and relief to others and interest. The total amount of Overseas Bechtel's alleged losses on the PC-2 Project is USD 8,015,980. However, in presenting its claim, Overseas Bechtel deducted the amount of USD 3,100,000 from the gross amount of its alleged losses to take account of amounts recovered from its insurers in respect of some of its losses.

584. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Overseas Bechtel's claim for interest.

A. Contract losses

1. Facts and contentions

585. Overseas Bechtel seeks compensation in the amount of USD 5,325,737 for contract losses. The claim is for unpaid amounts invoiced to Techcorp under the TSA.

586. Overseas Bechtel states that it commenced providing "development activities and financial services" under the TSA in July 1988. It continued to provide services to Techcorp up to 2 August 1990, and ceased all work on the PC-2 Project on this date. Following the cessation of work, Overseas Bechtel attempted to negotiate with Techcorp in respect of payment of costs due under the TSA. However, Techcorp made no further payments under the TSA.

587. Overseas Bechtel states that it submitted invoices to Techcorp for services rendered totalling USD 5,325,737. However, although the outstanding invoices were never disputed by Techcorp, the "invoices were either not formally approved for payment by Techcorp or were not paid due to the lack of funds in the letter of credit and no payment has been received".

2. Analysis and valuation

588. The Panel finds that Techcorp is an agency of the State of Iraq.

589. The supporting documentation provided by Overseas Bechtel indicates that the performance that created the debts in question occurred between September 1989 and August 1990. The Panel, therefore, finds that the contract losses alleged by Overseas Bechtel relate partly to work that was performed prior to 2 May 1990.

590. The claim for contract losses relating to work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, only the contract losses relating to work performed subsequent to 2 May 1990 are compensable. From the documentation provided by Overseas Bechtel, the Panel was able to identify the value of the work performed subsequent to 2 May 1990 and recommends compensation in the amount of USD 1,086,686.

3. Recommendation

591. The Panel recommends compensation in the amount of USD 1,086,686 for contract losses.

B. Loss of profits

1. Facts and contentions

592. Overseas Bechtel seeks compensation in the amount of USD 1,414,550 for loss of profits. The claim is for loss of anticipated profits (i.e., profits expected to be earned during the period 2 August 1990 to 22 July 1991) resulting from the early termination of the TSA. Overseas Bechtel states that its claim relates to the profit and overhead anticipated by Overseas Bechtel in respect of the TSA from 2 August 1990 to 22 July 1991.

593. The amount claimed is based on the calculation of average payroll values prior to 2 August 1990 using the multipliers and additives set forth in the TSA.

594. Overseas Bechtel limited its claim to a one year period, "even though the Project and Overseas Bechtel's involvement would have continued beyond that time frame".

2. Analysis and valuation

595. In support of its claim, Overseas Bechtel provided a schedule of loss of profits. The schedule sets out the total charges and "multiplier values" for its United States employees in relation to "home office", "project office" and "project site" for the six fourteen pay periods

between 13 May and 22 July 1990. Despite a request to provide copies of the audited financial statements and other financial information in respect of its Iraqi operations, Overseas Bechtel provided only a summary of its unaudited balance sheets for a six year period. The Panel finds that the evidence provided by Overseas Bechtel is insufficient to enable it to calculate the expected profits on the project with any reasonable certainty. Overseas Bechtel failed to demonstrate that its work under the TSA would have been profitable as a whole.

596. The Panel finds that Overseas Bechtel failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

3. Recommendation

597. The Panel recommends no compensation for loss of profits.

C. Payment and relief to others

1. Facts and contentions

598. Overseas Bechtel seeks compensation in the amount of USD 1,275,693 for payment or relief to others. The claim is for: (a) payroll costs incurred between August 1990 and January 1991 relating to Overseas Bechtel's employees who were evacuated from Iraq (USD 1,006,735); and (b) reimbursement of payments made to employees upon their return to their home countries for loss of personal assets (USD 268,958).

599. The total number of Bechtel group employees detained in Iraq before being evacuated between 2 August and 11 December 1990 exceeded 100. However, only 24 of those detained individuals were Overseas Bechtel employees working on the PC-2 Project. Overseas Bechtel's claim relates to payments made to those 24 employees.

600. Overseas Bechtel provided a statement, dated 6 February 1992, by an employee, who was the senior representative of the Bechtel group of companies in Iraq during the period of detention of Overseas Bechtel's staff. The statement contains an account of the circumstances of the detention of Overseas Bechtel's staff. A list of employees and their dependants who were in Iraq as at 2 August 1990 is attached to the statement.

601. The statement indicates that extensive repatriation of Overseas Bechtel's employees from Iraq had taken place by 8 December 1990. On 9 December 1990, all the remaining United States and Canadian employees left Baghdad followed by the remaining United Kingdom employees on 10 December 1990. The author of the statement was the last of the employees to depart Iraq on 11 December 1990.

2. Analysis and valuation

(a) Payroll costs to employees

602. Overseas Bechtel states that "during the illegal detention of its employees in Iraq, Overseas Bechtel continued to pay their remuneration and other contractual benefits, including payroll, vacation pay-off and other expenditure totalling USD 1,006,734.85".

603. In support of its claim, Overseas Bechtel provided a "Schedule of post 2 August 1990 salary costs et al". The schedule sets out salary costs totalling USD 1,006,735 for Overseas Bechtel's United States employees detained in Iraq for the months August 1990 to January 1991 (inclusive). The salary costs are supported by payroll records for the relevant months.

604. The Panel finds that the payroll costs of Overseas Bechtel's employees are compensable in principle. However, given that the last Overseas Bechtel employee departed Iraq on 11 December 1990, it is unclear to the Panel why Overseas Bechtel is claiming for salary costs to January 1991 (inclusive) for its employees. The Panel finds that an adjustment of the December 1990 payroll should be made to reflect the extensive repatriation of Overseas Bechtel's employees that had taken place by 8 December 1990.

605. The Panel is of the opinion that an adjustment to the August 1990 payroll should be made to take account of amounts invoiced to Techcorp for that month. After making the necessary adjustments, the Panel recommends compensation in the amount of USD 786,123 for payroll costs of employees.

(b) Payments to employees for loss of personal assets

606. In its claim, Overseas Bechtel stated that it seeks compensation "for payments to detained employees to reimburse their lost personal effects totalling USD 268,958.41". Some further detail is contained in an inter-office memorandum dated 3 April 1991. The first paragraph reads as follows:

> "When we were able to evacuate employees from Iraq it was done in the quickest manner possible. For this reason, employees were only able to remove from the country those personal effects (if any) in their immediate possession at the time of evacuation. As a result, most employees lost anywhere from a small portion to all of their personal effects. These effects were not covered by insurance since the employees were in a war zone".

607. In support of its claim, Overseas Bechtel provided copies of internal office memoranda authorising the transfer of funds. However, it did not demonstrate the actual transfer of funds. It did not provide copies of reimbursement cheques or payment vouchers.

608. The Panel finds that Overseas Bechtel provided insufficient evidence of its losses and recommends no compensation for payments to employees for loss of personal assets.

3. Recommendation

609. The Panel recommends compensation in the amount of USD 786,123 for payment and relief to others.

D. Overseas Bechtel's insurance recovery

610. Overseas Bechtel states that, in conjunction with other Bechtel group companies, it sought to recover some of its losses under the Bechtel group insurance policies. A total amount of USD 6,959,349 was recovered in respect of all of the Bechtel group's losses. Overseas Bechtel states that, of this amount, the sum of USD 3,100,000 was allocated to it.

611. Overseas Bechtel provided a statement dated 10 February 1994 made by the Risk Management Supervisor of the Bechtel Group Inc. The statement confirms that, of the total amount paid out to the various Bechtel entities, USD 3,100,000 was allocated to Overseas Bechtel for "losses incurred by Overseas Bechtel Inc. on the PC-2 Project."

612. Overseas Bechtel calculated the net amount of its claim by deducting USD 3,100,000 from the gross amount of its asserted losses. This is the correct approach and the Panel has followed it in reaching its conclusion.

E. Summary of recommended compensation for Overseas Bechtel

613. Based on the Panel's findings regarding Overseas Bechtel's claim, the following is the calculation:

Table 13. Recommended compensation for Overseas Bechtel

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	5,325,737	1,086,686
Loss of profits	1,414,550	nil
Payment or relief to others	1,275,693	786,123
Less insurance recovery	(3,100,000)	(3,100,000)
Total	4,915,980	nil

614. The Panel recommends no compensation.

XIX. CORRECTION OF FOURTH INSTALMENT CLAIM

615. In accordance with procedures set out in article 41 of the Rules for the correction of recommended amounts of compensation previously included in reports and recommendations of panels of Commissioners and approved by the Governing Council, the Panel, on the initiative of the Executive Secretary, recommends approval of the corrected recommended amount for the fourth instalment of "E3" claims as set out below.

616. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E3" Claims (S/AC.26/1999/14) (the "Fourth Report"), the Panel recommended compensation in the amount of USD 2,824,426 for the claimant Dodsal Pte. Ltd. ("Dodsal"), a corporation existing under the laws of Singapore (UNCC Claim Number 4001472). (See the Fourth Report, paragraphs 631 to 656). It has since become apparent to the Panel that an inadvertent calculation error occurred in the amount of DEM 508,978 in respect of Dodsal's claim for unpaid invoices. As a result, and applying the currency exchange rate utilised by the Panel in the Fourth Report, the Panel recommends that the amount of compensation awarded by Dodsal be increased by USD 325,850, which will result in a total recommended award of USD 3,150,276 for Dodsal.

XX. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

Table 14. Recommended compensation for the tenth instalment

Claimant	Claim amount (USD)	Recommended compensation (USD)
Consortium constituted by Abay Engineering S.A. and Spie Batignolles	12,168,700	nil
Sissa Construction and Management Corporation	159,718,942	nil
Alexandria Shipyard Company	15,356,626	nil
Misr Concrete Development Company	24,864,614	nil
Technip S.A.	44,542,630	4,921,519
Enterprise Muller Freres - Travaux Publics S.A.	1,552,629	nil
ABB Schaltanlagen GmbH	16,635,422	nil
Irbid District Electricity Company	1,444,824	nil
Jordan Electric Power Company	2,363,213	nil
The Jordanian Electrical and Mechanical Engineering Company	228,670	nil
Atlantic Gulf and Pacific Company of Manila, Inc.	288,817	2,880
Polimex-Cekop Limited	51,683,454	395,514
Bechtel Limited	10,013,427	3,082,085
Davy McKee (London) Limited	3,047,678	1,705,911
ABB Lummus Crest Inc.	30,230,415	6,962,766
John Brown, a division of Trafalgar House, Inc.	10,065,777	nil
Overseas Bechtel, Inc.	4,915,980	nil

Geneva, 21 June 2000

(_Signed_) Pierre Genton
Commissioner

(_Signed_) Vinayak Pradhan
Commissioner

(_Signed_) John Tackaberry
Chairman

Annex I

SUMMARY OF GENERAL PROPOSITIONS

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Introduction

1. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E3" Claims (S/AC.26/1999/14) (the "Fourth Report"), this Panel set out some general propositions based on those claims which had come before it and the findings of other panels of Commissioners contained in their reports and recommendations. Those propositions, as well as some observations specific to the claims in the fourth instalment of "E3" claims, are to be found in the introduction to the Fourth Report (the "Preamble").

2. The Fourth Report was approved by the Governing Council in its decision 74 (S/AC.26/Dec.74 (1999)); and the claims that this Panel has subsequently encountered continue to manifest the same or similar issues. Accordingly, the Panel has revised the Preamble, so as to delete the specific comments, and thus present this Summary of General Propositions (the "Summary"). The Summary is intended to be annexed to, and to form part of, the reports and recommendations made by this Panel. The Summary should facilitate the drafting, and reduce the size, of this Panel's future reports, since it will not be necessary to set matters out in extenso in the body of each report.

3. As further issues are resolved, they may be added at the end of future editions of this Summary.

4. In this Summary, the Panel wishes to record:

(a) the procedure involved in evaluating the claims put before it and in formulating recommendations for the consideration of the Governing Council; and

(b) its analyses of the recurrent substantive issues that arise in claims before the Commission relating to construction and engineering contracts.

5. In deciding to draft this Summary in a format which was separated out from the actual recommendations in the report itself, and in a way that was re-usable, the Panel was motivated by a number of matters. One was the desire to keep the substantive element of its reports to a manageable length. As the number of reports generated by the various panels increases, there seems to be a good deal to be said for what might be called economies of scale. Another matter was the awareness of the Panel of the high costs involved in translating official documents from their original language into each official language of the United Nations. The Panel is concerned to avoid the heavy costs of re-translation of recurrent texts, where the Panel is applying established principles to fresh claims. That re-translation would occur if the reasoning set out in this Summary had been incorporated into the principal text of each report at each relevant point. And, of course, that very repetition of principles seems unnecessary in itself, and this Summary avoids it. In sum, it is the

intention of the Panel to shorten those reports and recommendations, wherever possible, and thereby to reduce the cost of translating them.

I. THE PROCEDURE

A. Summary of the process

6. Each of the claimants whose claims are presented to this Panel is given the opportunity to provide the Panel with information and documentation concerning the claims. In its review of the claims, the Panel considers evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"). The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other panels, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel is mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel expounds in this Summary both procedural and substantive aspects of the process of formulating recommendations in its consideration of the individual claims.

B. The nature and purpose of the proceedings

7. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559).

8. The Panel is entrusted with three tasks in its proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Second, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

9. In fulfilling these tasks, the Panel considers that the vast number of claims before the Commission and the time limits in the Rules necessitate the use of an approach which is itself unique, but the principal characteristics of which are rooted in generally accepted procedures for claim determination, both domestic and international. It involves the employment of well established general legal standards of proof and valuation methods that have much experience behind them. The resultant process is essentially documentary rather than oral, and inquisitorial rather than adversarial. This method both realises and balances the twin objectives of speed and accuracy. It also permits the

efficient resolution of the thousands of claims filed by corporations with the Commission.

C. The procedural history of the "E3" Claims

10. The claims submitted to the Panel are selected by the secretariat of the Commission from among the construction and engineering claims (the ""E3" Claims") on the basis of established criteria. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category "E" claims").

11. Prior to presenting each instalment of claims to the Panel, the secretariat performs a preliminary assessment of each claim included in a particular instalment in order to determine whether the claim meets the formal requirements established by the Governing Council in article 14 of the Rules.

12. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. These claimants must submit:

(a) an "E" claim form with four copies in English or with an English translation;

(b) evidence of the amount, type and causes of losses;

(c) an affirmation by the Government that, to the best of its knowledge, the claimant is incorporated in or organized under the law of the Government submitting the claim;

(d) documents evidencing the name, address and place of incorporation or organization of the claimant;

(e) evidence that the claimant was, on the date on which the claim arose, incorporated or organized under the law of the Government which has submitted the claim;

(f) a general description of the legal structure of the claimant; and

(g) an affirmation by the authorized official for the claimant that the information contained in the claim is correct.

13. Additionally, the "E" claim form requires that a claimant submit with its claim a separate statement in English explaining its claim ("Statement of Claim"), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed losses. The following particulars are requested in the "INSTRUCTIONS FOR CLAIMANTS":

(a) the date, type and basis of the Commission's jurisdiction for each element of loss;

(b) the facts supporting the claim;

(c) the legal basis for each element of the claim; and

(d) the amount of compensation sought and an explanation of how the amount was calculated.

14. If it is determined that a claim does not provide these particulars or does not include a Statement of Claim, the claimant is notified of the deficiencies and invited to provide the necessary information pursuant to article 15 of the Rules (the "article 15 notification"). If a claimant fails to respond to that notification, the claimant is sent a formal article 15 notification.

15. Further, a review of the legal and evidentiary basis of each claim identifies specific questions as to the evidentiary support for the alleged losses. It also highlights areas of the claim in which further information or documentation is required. Consequently, questions and requests for additional documentation are transmitted to the claimants pursuant to article 34 of the Rules (the "article 34 notification"). If a claimant fails to respond to the article 34 notification, a reminder notification is sent to the claimant. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim is conducted. Communications with claimants are made through their respective governments.

16. It is the experience of the Panel in the claims reviewed by it to date that this analysis usually brings to light the fact that many claimants lodge little material of a genuinely probative nature when they initially file their claims. It also appears that many claimants do not retain clearly relevant documentation and are unable to provide it when asked for it. Indeed, some claimants destroy documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims that they have put forward. Some claimants carry this to the extreme of having to ask the Commission, when responding to an article 15 or an article 34 notification, for a copy of their own claim. Finally, some claimants do not respond to requests for further information and evidence. The consequence is inevitably that for a large number of loss elements and a smaller number of claimants the Panel is unable to recommend any compensation.

17. The Panel performs a thorough and detailed factual and legal review of the claims. The Panel assumes an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel makes initial determinations as to the compensability of the loss

elements of each claim. Next, reports on each of the claims are prepared focusing on the appropriate valuation of each of the compensable losses, and on the question of whether the evidence produced by the claimant is sufficient in accordance with article 35(3) of the Rules.

18. The cumulative effect is one of the following recommendations: (a) compensation for the loss in the full amount claimed; (b) compensation for the loss in a lower amount than that claimed; or (c) no compensation.

II. PROCEDURAL ISSUES

A. Panel recommendations

19. Once a motivated recommendation of a panel is adopted by a decision of the Governing Council, it is something to which this Panel gives great weight.

20. All panel recommendations are supported by a full analysis. When a new claim is presented to this Panel it may happen that the new claim will manifest the same characteristics as the previous claim which has been presented to a prior panel. In that event, this Panel will follow the principle developed by the prior panel. Of course, there may still be differences inherent in the two claims at the level of proof of causation or quantum. Nonetheless the principle will be the same.

21. Alternatively, that second claim will manifest different characteristics to the first claim. In that event, those different characteristics may give rise to a different issue of principle and thus warrant a different conclusion by this Panel to that of the previous panel.

B. Evidence of loss

22. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has stated in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation (S/AC.26/1992/15).

23. The Panel takes this opportunity to emphasise that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission of evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. In implementing this approach, the Panel applies the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

1. Sufficiency of evidence

24. In the final outcome, claims that are not supported by sufficient and appropriate evidence fail. In the context of the construction and engineering claims that are before this Panel, the most important evidence is documentary. It is in this context that the Panel records a syndrome which it found striking when it addressed the first claims presented to it and which has continued to manifest itself in the claims subsequently encountered. This was the reluctance of claimants to make critical documentation available to the Panel.

25. Imperatively, the express wording of decision 46 of the Governing Council requires that "... claims received in categories 'D', 'E', and 'F' must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss ..." In this same decision, the Governing Council confirmed that "... no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant,..." (S/AC.26/Dec.46(1998)).

26. It is also the case that the Panel has power under the Rules to request additional information and, in unusually large or complex cases, further written submissions. Such requests usually take the form of procedural orders. Where such orders are issued, considerable emphasis is placed on this need for sufficient documentary and other appropriate evidence.

27. Thus there is an obligation to provide the relevant documentary evidence both on the first filing of a claim and on any subsequent steps.

28. What is more, the absence of any relevant contemporary record to support a particular claim means that the claimant is inviting the Panel to make an award, often of millions of dollars, on no foundation other than the assertion of the claimant. This would not satisfy the "sufficient evidence" rule in article 35(3) of the Rules and would go against the instruction of the Governing Council contained in decision 46. It is something that the Panel is unable to do.

2. Sufficiency under article 35(3): The obligation of disclosure

29. Next in the context of documentary evidence, this Panel wishes to highlight an important aspect of the rule that claims must be supported by sufficient documentary and other appropriate evidence. This involves bringing to the attention of the Commission all material aspects of the claim, whether such aspects are seen by the claimant as beneficial to, or reductive of, its claims. The obligation is not dissimilar to good faith requirements under domestic jurisdictions.

3. Missing documents: The nature and adequacy of the paper trail

30. The Panel now turns to the question of what is required in order to establish an adequate paper trail.

31. Where documents cannot be supplied, their absence must be explained in a credible manner. The explanation must itself be supported by the appropriate evidence. Claimants may also supply substitute documentation for or information about the missing documents. Claimants must remember that the mere fact that they suffered a loss at the same time as the hostilities in the Persian Gulf were starting or were in process does not mean that the loss was directly caused by Iraq's invasion and occupation of Kuwait. A causative link must be established. It should also be borne in mind that it was not the intention of the Security Council in its resolutions to provide a "new for old" basis of reimbursement of the losses suffered in respect of tangible property. Capital goods depreciate. That depreciation must be taken into account and demonstrated in the evidence filed with the Commission. In sum, in order for evidence to be considered appropriate and sufficient to demonstrate a loss, the Panel expects claimants to present to the Commission a coherent, logical and sufficiently evidenced file leading to the financial claims that they are making.

32. Of course, the Panel recognises that in time of civil disturbances, the quality of proof may fall below that which would be submitted in a peace time situation. Persons who are fleeing for their lives do not stop to collect the audit records. Allowances have to be made for such vicissitudes.

33. Thus the Panel is not surprised that some of the claimants in the instalments presented to it to date seek to explain the lack of documentation by asserting that it is, or was, located in areas of civil disorder or has been lost or destroyed, or, at least, cannot be accessed. But the fact that offices on the ground in the region have been looted or destroyed would not explain why claimants have not produced any of the documentary records that would reasonably be expected to be found at claimants' head offices situated in other countries.

34. The Panel approaches the claims presented to it in the light of the general and specific requirements to produce documents noted above. Where there is a lack of documentation, combined with no or no adequate explanation for that lack, and an absence of alternative evidence to make good any part of that lack, the Panel has no opportunity or basis upon which to make a recommendation.

C. Amending claims after filing

35. In the course of processing the claims after they have been filed with the Commission, further information is sought from the claimants pursuant to the Rules. When the claimants respond they sometimes seek to use the opportunity to amend their claims. For example, they add new loss

elements. They increase the amount originally sought in respect of a particular loss element. They transfer monies between or otherwise adjust the calculation of two or more loss elements. In some cases, they do all of these.

36. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council approved a mechanism for these claimants to file unsolicited supplements until 11 May 1998. After that date a response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a loss element or elements or to seek to recover in respect of new loss elements. In these circumstances, the Panel is unable to take into account such increases or such new loss elements when it is formulating its recommendations to the Governing Council. It does, however, take into account additional documentation where that is relevant to the original claim, either in principle or in detail. It also exercises its inherent powers to re-characterise a loss, which is properly submitted as to time, but is inappropriately allocated.

37. Some claimants also file unsolicited submissions. These too sometimes seek to increase the original claim in the ways indicated in the previous paragraph. Such submissions when received after 11 May 1998 are to be treated in the same way as amendments put forward in solicited supplements. Accordingly the Panel is unable to, and does not, take into account such amendments when it is formulating its recommendations to the Governing Council.

III. SUBSTANTIVE ISSUES

A. Applicable law

38. As set forth in paragraphs 17 and 18 of the Fourth Report, paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. Pursuant to article 31 of the Rules, the Panel applies Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

39. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

40. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq" was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of "E3" Claims (the "Fifth Report", S/AC.26/1999/2), this Panel adopted the presumption that for contracts performed in Iraq, the other contracting party was an Iraqi Government entity.

C. The "arising prior to" clause

41. The Panel recognises that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of "E2" claims concluded that the "arising prior to" clause was intended to exclude the foreign debt of Iraq which existed at the time of Iraq's invasion of Kuwait from the jurisdiction of the Commission. As a result, the "E2" Panel found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E2" Claims, S/AC.26/1998/7, paragraph 90)).

42. That report was approved by the Governing Council. Accordingly, this Panel adopts the "E2" Panel's interpretation which is to the following effect:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

43. Thus, this Panel accepts that, in general, a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt or obligation that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

44. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is available for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention."

45. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

46. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered business "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific

guidance to the Panel as to how the "direct loss" requirement must be interpreted.

47. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of "direct loss". These conclusions are set out in the following paragraphs.

48. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two matters. First, that the breakdown in civil order in these countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees. Second, as set forth in paragraph 13 of decision 9, that the claimant left physical assets in Iraq or in Kuwait.

49. With respect to losses relating to contracts to which Iraq was a party, force majeure or similar legal principles are not available as a defence to the obligations of Iraq.

50. With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following Iraq's invasion caused the claimant to evacuate the personnel needed to perform the contract.

51. In the context of the losses set out above, reasonable costs which have been incurred to mitigate those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

52. These findings regarding the meaning of "direct loss" are not intended to resolve every issue that may arise with respect to this Panel's interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims.

53. Finally, there is the question of the geographical extent of the impact of events in Iraq and Kuwait outside these two countries. Following on the findings of the "E2" Panel in its first report, this Panel finds that damage or loss suffered as a result of (a) military operations in the region by either the Iraqi or the Allied Coalition Forces or (b) a credible and serious threat of military action that was connected to Iraq's invasion and occupation of Kuwait is compensable in principle. Of course, the further the project in question was from the area where military operations were taking place, the more the claimant may have to do to establish causality. On the other hand, the potential that an event such as the invasion and occupation of Kuwait has for causing an extensive ripple effect cannot be ignored. Each case must depend on its facts.

E. Date of loss

54. There is no general principle with respect to the date of loss. It needs to be addressed on an individual basis. In addition, the specific loss elements of each claim may give rise to different dates if analysed strictly. However, applying a different date to each loss element within a particular claim is impracticable as a matter of administration. Accordingly, the Panel has decided to determine a single date of loss for each claimant, which, in most cases, coincides with the date of the collapse of the project.

F. Currency exchange rate

55. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

56. The Panel finds that, as a general rule, where an exchange rate is set forth in the contract then that is the appropriate rate for losses under the relevant contracts because this was specifically agreed by the parties.

57. For losses that are not contract based, however, the contract rate is not usually an appropriate rate of exchange. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, at the date of loss.

G. Interest

58. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

59. Accordingly, the Panel recommends that interest shall run from the date of loss.

H. Claim preparation costs

60. Some claimants seek to recover compensation for the cost of preparing their claims. The compensability of claim preparation costs has not hitherto been ruled on and will be the subject, in due course, of a specific decision by the Governing Council. Therefore, this Panel has made

and will make no recommendations with respect to claim preparation costs in any of the claims where they have been raised.

I. Contract losses

1. Claims for contract losses with non-Iraqi party

61. Some of the claims relate to losses suffered as a result of non-payment by a non-Iraqi party. The fact of such a loss, simpliciter, does not establish it as a direct loss within the meaning of Security Council resolution 687 (1991). In order to obtain compensation, a claimant must lodge sufficient evidence that the entity with which it carried on business on 2 August 1990 was unable to make payment as a direct result of Iraq's invasion and occupation of Kuwait.

62. A good example of this would be that the party was insolvent and that the insolvency was a direct result of Iraq's invasion and occupation of Kuwait. At the very least a claimant should demonstrate that the other party had not renewed operations after the end of the occupation. In the event that there are multiple factors which have resulted in the failure to resume operations, apart from the proved insolvency of the other party, the Panel will have to be satisfied that the effective reason or causa causans was Iraq's invasion and occupation of Kuwait.

63. Any failure to pay because the other party was excused from performance by the operation of law which came into force after Iraq's invasion and occupation of Kuwait is in the opinion of this Panel the result of a novus actus interveniens and is not a direct loss arising out of Iraq's invasion and occupation of Kuwait.

2. Advance payments

64. Many construction contracts provide for an advance payment to be made by the employer to the contractor. These advance payments are often calculated as a percentage of the initial price (initial, because many such contracts provide for automatic and other adjustments of the price during the execution of the works). The purpose of the advance payment is to facilitate certain activities which the contractor will need to carry out in the early stages.

65. Mobilisation is often one such activity. Plant and equipment may need to be purchased. A workforce will have to be assembled and transported to the work site, where facilities will be needed to accommodate it. Another such activity is the ordering of substantial or important materials which are in short supply and may, therefore, be available only at a premium or at a long lead time.

66. Advance payments are usually secured by a bond provided by the contractor, and are usually paid upon the provision of the bond. They are frequently repaid over a period of time by way of deduction by the employer

from the sums which are payable at regular intervals (often monthly) to the contractor for work done. See, in the context of payments which are recovered over a period of time, the observations about amortisation at paragraph 120, infra. Those observations apply mutatis mutandis to the repayment of advance payments.

67. The Panel notes that some claimants presenting claims have not clearly accounted for the amounts of money already paid to them by the employer. This Panel regularly sees evidence of advance payments amounting to tens of millions of United States dollars. Where advance payments have been part of the contractual arrangements between the claimant and the employer, the claimant must account for these payments in reduction of its claims, unless these payments can be shown to have been recouped in whole or in part by the employer. Where no explanation or proof of repayment is forthcoming, the Panel has no option but to conclude that these amounts paid in advance are due, on a final accounting, to the employer, and must be deducted from the claimant's claim.

3. Contractual arrangements to defer payments

(a) The analysis of "old debt"

68. Where payments are deferred under the contracts upon which the claims are based, an issue arises as to whether the claimed losses are "debts and obligations arising prior to 2 August 1990" and therefore outside the jurisdiction of the Commission.

69. In its first report, the "E2" Panel interpreted Security Council resolution 687 (1991) as intending to eliminate what may be conveniently called "old debt". In applying this interpretation to the claim before it the "E2" Panel identified, as "old debt", cases where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990. In those cases, claims based on payments owed, in kind or in cash, for such performance are outside the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990. "Performance" as understood by the "E2" Panel for the purposes of this rule meant complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance. In the claim the "E2" Panel was considering, the work under the contract was clearly performed prior to 2 May 1990. However, the debts were covered by a form of deferred payments agreement dated 29 July 1984. This agreement was concluded between the parties to the original contracts and postdated the latter.

70. In its analysis, the "E2" Panel found that deferred payments arrangements go to the very heart of what the Security Council described in paragraph 16 of resolution 687 as a debt of Iraq arising prior to 2 August 1990. It was this very kind of obligation which the Security Council had

in mind when, in paragraph 17 of resolution 687 (1991), it directed Iraq to "adhere scrupulously" to satisfying "all of its obligations concerning servicing and repayment". Therefore, irrespective of whether such deferred payment arrangements may have created new obligations on the part of Iraq under a particular applicable municipal law, they did not do so for the purposes of resolution 687 (1991) and are therefore outside the jurisdiction of this Commission.

71. The arrangements that the "E2" Panel was considering were not arrangements that arose out of genuine arms' length commercial transactions, entered into by construction companies as part and parcel of their normal businesses. Instead the situation which the "E2" Panel was addressing was described as follows:

> "The negotiation of these deferred payment arrangements was typically conducted with Iraq not by the contractor or supplier itself, but rather by its Government. Typically, the Government negotiated on behalf of all of the contracting parties from the country concerned who were in a similar situation. The deferred payment arrangements with Iraq were commonly entered into under a variety of forms, including complicated crude oil barter arrangements under which Iraq would deliver certain amounts of crude oil to a foreign State to satisfy consolidated debts; the foreign State then would sell the oil and, through its central bank, credit particular contractors' accounts." (S/AC.26/1998/7, paragraph 93).
>
> "Iraq's debts were typically deferred by contractors who could not afford to "cut their losses" and leave, and thus these contractors continued to work in the hope of eventual satisfaction and continued to amass large credits with Iraq. In addition, the payment terms were deferred for such long periods that the debt servicing costs alone had a significant impact on the continued growth of Iraq's foreign debt." (S/AC.26/1998/7, paragraph 94).

72. This Panel agrees.

(b) Application of the "old debt" analysis

73. In the application of this analysis to claims other than those considered by the "E2" Panel, there are two aspects which are worth mentioning.

74. The first is that the problem does not arise where the actual work has been performed after 2 May 1990. The arrangement deferring payment is irrelevant to the issue. The issue typically resolves itself in these cases into one of proof of the execution of the work, the quantum, the non payment and causation.

75. The second concerns the ambit of the above analysis. As noted above, the claims which led to the above analysis arose out of "non-commercial" arrangements. They were situations where the original terms of payment entered into between the parties had been renegotiated during the currency of the contract or the negotiations or renegotiations were driven by inter-governmental exchanges. Such arrangements were clearly the result of the impact of Iraq's increasing international debt.

76. Thus one can see underlying the "E2" Panel's analysis two important factors. The first was the subsequent renegotiation of the payment terms of an existing contract to the detriment of the claimant (contractor). The second was the influence on contracts of the transactions between the respective governments. In both cases, a key element underlying the arrangements must be the impact of Iraq's mountain of old debt.

77. In the view of this Panel, where either of these factors is wholly or partially the explanation of the "loss" suffered by the claimant, then that loss or the relevant part of it is outside the jurisdiction of the Commission and cannot form the basis of recommendation by a panel. It is not necessary that both factors be present. A contract that contained deferment provisions as originally executed would still be caught by the "arising prior to" rule if the contract was the result of an inter-governmental agreement driven by the exigencies of Iraq's financial problems. It would not be a commercial transaction so much as a political agreement, and the "loss" would not be a loss falling within the jurisdiction of the Commission.

4. Losses arising as a result of unpaid retention monies

78. The claims before this Panel include requests for compensation for what could be described as another form of deferred payment, namely unpaid retention monies.

79. Under many if not most construction contracts, provision is made for the regular payment to the contractor of sums of money during the performance of the work under the contract. The payments are often monthly, and often calculated by reference to the amount of work that the contractor has done since the last regular payment was calculated.

80. Where the payment is directly related to the work done, it is almost invariably the case that the amount of the actual (net) payment is less than the contractual value of the work done. This is because the employer retains in his own hands a percentage (usually 5 per cent or 10 per cent and with or without an upper limit) of that contractual value. (The same approach usually obtains as between the contractor and his subcontractors.) The retained amount is often called the "retention" or the "retention fund". It builds up over time. The less work the contractor carries out before the project comes to an early halt, the smaller the fund.

81. The retention is usually payable in two stages, one at the commencement of the maintenance period, as it is often called, and the other at the end. The maintenance period usually begins when the employer first takes over the project, and commences to operate or use it. Thus the work to which any particular sum which is part of the retention fund relates may have been executed a very long time before the retention fund is payable.

82. Retention fund provisions are very common in the construction world. The retention fund serves two roles. It is an encouragement to the contractor to remedy defects appearing before or during the maintenance period. It also provides a fund out of which the employer can reimburse itself for defects that appear before or during the maintenance period which the contractor has, for whatever reason, failed or refused to make good.

83. In the claims before this Panel, events - in the shape of Iraq's invasion and occupation of Kuwait - have intervened. The contract has effectively come to an end. There is no further scope for the operation of the retention provisions. It follows that the contractor, through the actions of Iraq, has been deprived of the opportunity to recover the money. In consequence the claims for retention fall within the jurisdiction of the Commission.

84. In the light of the above considerations it seems to this Panel that the situation in the case of claims for retention is as follows:

(a) The evidence before the Commission may show that the project was in such trouble that it would never have reached a satisfactory conclusion. In such circumstances, there can be no positive recommendation, principally because there is no direct causative link between the loss and the invasion and occupation of Kuwait.

(b) Equally the evidence may show that the project would have reached a conclusion, but that there would have been problems to resolve. Accordingly the contractor would have had to expend money resolving those problems. That potential cost would have to be deducted from the claim for retention; and accordingly the most convenient course would be to recommend an award to the contractor of a suitable percentage of the unpaid retention.

(c) Finally, on the evidence it may be the case that there is no reason to believe or conclude that the project would have gone other than satisfactorily. In those circumstances, it seems that the retention claim should succeed in full.

5. Guarantees, bonds, and like securities

85. Financial recourse agreements are part and parcel of a major construction contract. Instances are (a) guarantees - for example given by

parent companies or through banks; (b) what are called "on demand" or "first demand" bonds (hereinafter "on demand bonds") which support such matters as bidding and performance; and (c) guarantees to support advance payments. (Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different category. As to these, see paragraphs 95 to 102, infra).

86. Financial recourse arrangements give rise to particular problems when it comes to determining the claims filed in the population of construction and engineering claims. A convenient and stark example is that of the on demand bond.

87. The purpose of an on demand bond is to permit the beneficiary to obtain monies under the bond without having to prove default on the part of the other party - namely, in the situations under discussion here, the contractor executing the work. Such a bond is often set up by way of a guarantee given by the contractor or its parent to its own bank in its home State. That bank gives an identical bond to a bank (the second bank) in the State of the employer under the construction contract. In its turn, the second bank gives an identical bond to the employer. This leaves the employer, at least theoretically, in the very strong position of being able, without having to prove any default on the part of the contractor, to call down a large sum of money which will be debited to the contractor.

88. Of course, the contractor's bank will have two arrangements in place. First, an arrangement whereby it is secured as to the principal sum, the subject of the bond, in case the bond is called. Second, it will have arranged to exact a service charge, typically raised quarterly, half-yearly or annually.

89. Many claimants have raised claims in respect of the service charges; and also in respect of the principal sums. The former are often raised in respect of periods of years measured from the date of Iraq's invasion and occupation of Kuwait. The latter have, hitherto at least, been cautionary claims, in case the bonds are called in the future.

90. This Panel approaches this issue by observing that the strength of the position given to the employer by the on demand bond is sometimes more apparent than real. This derives from the fact that the courts of some countries are reluctant to enforce payment of such bonds if they feel that there is serious abuse by the employer of its position. For example, where there is a persuasive allegation of fraud, some courts will be prepared to injunct the beneficiary from making a call on the bond, or one or other of the banks from meeting the demand. It is also the case that there may be remedies for the contractor in some jurisdictions when the bonds are called in circumstances that are clearly outside the original contemplation of the parties.

91. The Panel notes that most if not all contracts for the execution of major construction works by a contractor from one country in the territory of another country will have clauses to deal with war, insurrection or civil disorder. Depending on the approach of the relevant governing law to such matters, these provisions, if triggered, may have a direct or indirect effect on the validity of the bond. Direct, if under the relevant legal regime, the effects of the clause in the construction contract apply also to the bond; indirect if the termination or modification of the underlying obligation (the construction contract) gives rise to the opportunity to seek a forum-driven modification or termination of the liabilities under the bond.

92. In addition, the simple passage of time is likely to give rise to the right to treat the bond obligation as expired or unenforceable, or to seek a forum-driven resolution to the same effect.

93. In sum, and in the context of Iraq's invasion and occupation of Kuwait and the time which has passed since then, it seems to this Panel that it is highly unlikely that on demand bond obligations of the sort this Panel has seen in the instalments it has addressed are alive and effective.

94. If that analysis is correct, then it seems to this Panel that claims for service charges on these bonds will only be sustainable in very unusual circumstances. Equally, claims for the principal will only be sustainable where the principal has in fact been irrevocably paid out and where the beneficiary of the bond had no factual basis to make a call upon the bond.

6. Export credit guarantees

95. Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different case to guarantees generally. These forms of financial recourse have names such as "credit risk guarantees". They are in effect a form of insurance, often underwritten by the government of the territory in which the contractor is based. They exist as part of the economic policy of the government in question, in order to encourage trade and commerce by its nationals abroad.

96. Such guarantees often have a requirement that the contractor must exhaust all local remedies before calling on the guarantee; or must exhaust all possible remedies before making a call.

97. Claims have been made by parties for:

(a) reimbursement of the premia paid to obtain such guarantees; and also for

(b) shortfalls between the amounts recovered under such guarantees and the losses said to have been incurred.

In the view of this Panel, one of these types of claim is misconceived; and the other is mis-characterised.

98. A claim for the premia is misconceived. A premium paid for any form of insurance is not recoverable unless the policy is avoided. Once the policy is in place, either the event that the policy is intended to embrace occurs, or it does not. If it does, then there is a claim under the policy. If it does not then there is no such claim. In neither case does it seem to the Panel that the arrangements - prudent and sensible as they are - give rise to a claim for compensation for the premia. There is no "loss" properly so called or any causative link with Iraq's invasion and occupation of Kuwait.

99. Further, where a contractor has in fact been indemnified in whole or in part by such a body in respect of losses incurred as a result of Iraq's invasion and occupation of Kuwait, there is, to that extent, no longer any loss for which that contractor can claim to the Commission. Its loss has been made whole.

100. The second situation is that where a contractor claims for the balance between what are said to be losses incurred as a result of Iraq's invasion and occupation of Kuwait and what has been recovered from the guarantor.

101. Here the claim is mis-characterised. That balance may indeed be a claimable loss; but its claimability has nothing to do with the fact that the monies represent a shortfall between what has been recovered under the guarantee and what has been lost. Instead, the correct analysis should start from a review of the cause of the whole of the loss of which the balance is all that remains. The first step is to establish whether there is evidence to support that whole sum, that it is indeed a sum that the claimant has paid out or failed to recover; and that there is the necessary causation. To the extent that the sum is established, then to that extent the claim is prima facie compensable. However, so far as there has been reimbursement by the guarantor, the loss has been made good, and there is nothing left to claim for. It is only if there is still some qualifying loss, not made good, that there is room for a recommendation of this Panel.

102. Finally, there are the claims by the bodies granting the credit guarantees who have paid out sums of money. They entered into an insurance arrangement with the contractor. In consideration of that arrangement, they required the payment of premia. As before, either the event covered by the insurance occurred or it did not. In the former case, the Panel would have thought that the guarantor was contractually obliged to pay out; and in the latter case, not so. Whether any payments made in these circumstances give rise to a compensable claim is not a matter for this Panel. Such claims come within the population of claims allocated to the "E/F" Panel.

7. Frustration and force majeure clauses

103. Construction contracts, both in common law and under the civil law, frequently contain provisions to deal with events that have wholly changed the nature of the venture. Particular events which are addressed by such clauses include war, civil strife and insurrection. Given the length of time that a major construction project takes to come to fruition and the sometimes volatile circumstances, both political and otherwise, in which such contracts are carried out, this is hardly surprising. Indeed, it makes good sense. The clauses make provision as to how the financial consequences of the event are to be borne; and what the result is to be so far as the physical project is concerned.

104. Such clauses give rise to two questions when it comes to the population of claims before this Panel. The first question is whether Iraq is entitled to invoke such clauses to reduce its liability. The second is whether claimants may utilise such clauses to support or enhance their recovery from the Commission.

105. As to the first question, the position seems to this Panel to be as follows. In the population of claims before the Commission, the frustrating or force majeure event will nearly always be the act or omission of Iraq itself. However, such a clause is designed to address events which, if they occurred at all, were anticipated to be wholly outside the control of both parties. It would be quite inappropriate for the causal wrongdoer to rely on such clause to reduce the consequences of its own wrongdoing.

106. But the second question then arises as to whether claimants can rely upon such clauses. An example of such reliance would be where the clause provides for the acceleration of payments which otherwise would not have fallen due. As to this question, one example of this sort of claim has been addressed and the answer categorically spelt out in the first report of the "E2" Panel as follows:

> "Second, [the Claimants] direct the Commission's attention to the clauses relating to "frustration" in the respective underlying contracts. The Claimants assert that in the case of frustration of contract, these clauses accelerate the payments due under the contract, in effect giving rise to a new obligation on the part of Iraq to pay all the amounts due and owing under the contract regardless of when the underlying work was performed. The Panel has concluded that claimants may not invoke such contractual agreements or clauses before the Commission to avoid the "arising prior to" exclusion established by the Security Council in resolution 687 (1991); consequently, this argument must fail." (S/AC.26/1998/7, paragraph 188).

107. The situation described above was one where the work that was the subject of the claim had been performed prior to Iraq's invasion and

occupation of Kuwait, and, therefore, fell clearly foul of the "arising prior to" rule. However, the claimants, who had agreed on arrangements for delayed payment, sought to rely on the frustration clause to get over this problem. The argument was, as this Panel understands it, that the frustration clause was triggered by the events which had in fact occurred, namely Iraq's invasion and occupation of Kuwait. The frustration clause provided for the accelerated payment of sums due under the contract. Payment of the sums had originally been deferred to dates which were still in the future at the time of the invasion and occupation; but the frustrating event meant that they became due during the time of, or indeed at the beginning of, Iraq's invasion and occupation of Kuwait. Accordingly, the payments had, in the event, become due within the period covered by the jurisdiction established by Security Council resolution 687 (1991). Therefore, a claim for the reimbursement of these payments could be entertained by the "E2" Panel.

108. It was this claim that the "E2" Panel rejected. This Panel agrees.

109. There remains the situation where the frustration clause is being used by claimants to enhance a claim, other than by way of circumventing the "arising prior to" rule, for example, where the acceleration delivered by the frustration clause is put forward to seek to bring into the period within the jurisdiction of the Commission payments which would otherwise have been received, under the contract, well after the liberation of Kuwait, and therefore would not otherwise be compensable.

110. In the view of this Panel, such claims would similarly fail. In this case, as in the case addressed by the "E2" Panel, claimants are seeking to use the provisions of private contracts to enhance the jurisdiction granted by Security Council resolution 687 (1991) and defined by jurisprudence developed by the Commission. That is not an appropriate course. It is not open to individual entities by agreement or otherwise, to modify the jurisdiction of the Commission.

J. Claims for overhead and "lost profits"

1. General

111. Any construction project can be broken down into a number of components. All of these components contribute to the pricing of the works. In this Panel's view, it is helpful for the examination of these kinds of claims to begin by rehearsing in general terms the way in which many contractors in different parts of the world construct the prices that ultimately appear in the construction contracts they sign. Of course, there is no absolute rule as to this process. Indeed, it is unlikely that any two contractors will assemble their bids in exactly the same way. But the constraints of construction work and the realities of the financial world impose a general outline from which there will rarely be a substantial deviation.

112. Many of the construction contracts encountered in the claims submitted to this Panel contain a schedule of rates or a "bill of quantities". This document defines the amount to be paid to the contractor for the work performed. It is based on previously agreed rates or prices. The final contract price is the aggregate value of the work calculated at the quoted rates together with any variations and other contractual entitlements and deductions which increase or decrease the amount originally agreed.

113. Other contracts in the claims submitted to this Panel are lump sum contracts. Here the schedule of rates or bill of quantities has a narrower role. It is limited to such matters as the calculation of the sums to be paid in interim certificates and the valuation of variations.

114. In preparing the schedule of rates, the contractor will plan to recover all of the direct and indirect costs of the project. On top of this will be an allowance for the "risk margin". In so far as there is an allowance for profit it will be part of the "risk margin". However, whether or not a profit is made and, if made, in what amount, depends obviously on the incidence of risk actually incurred.

115. An examination of actual contracts combined with its own experience of these matters has provided this Panel with guidelines as to the typical breakdown of prices that may be anticipated on construction projects of the kind relevant to the claims submitted to this Panel.

116. The key starting point is the base cost - the cost of labour, materials and plant - in French the "prix secs". In another phrase, this is the direct cost. The direct cost may vary, but usually represents 65 to 75 per cent of the total contract price.

117. To this is added the indirect cost - for example the supply of design services for such matters as working drawings and temporary works by the contractor's head office. Typically, this indirect cost represents about 25 to 30 per cent of the total contract price.

118. Finally, there is what is called the "risk margin" - the allowance for the unexpected. The risk margin is generally in the range of between barely above zero and five per cent of the total contract price. The more smoothly the project goes, the less the margin will have to be expended. The result will be enhanced profits, properly so called, recovered by the contractor at the end of the day. The more the unexpected happens and the more the risk margin has to be expended, the smaller the profit will ultimately be. Indeed, the cost of dealing with the unexpected or the unplanned may equal or exceed the risk margin, leading to a nil result or a loss.

119. In the view of the Panel, it is against this background that some of the claims for contract losses need to be seen.

2. Head office and branch office expenses

120. These are generally regarded as part of the overhead. These costs can be dealt with in the price in a variety of ways. For example, they may be built into some or all of the prices against line items; they may be provided for in a lump sum; they may be dealt with in many other ways. One aspect, however, will be common to most, if not all, contracts. It will be the intention of the contractor to recover these costs through the price at some stage of the execution of the contract. Often the recovery has been spread through elements of the price, so as to result in repayment through a number of interim payments during the course of the contract. Where this has been done, it may be said that these costs have been amortised. This factor is relevant to the question of double-counting (see paragraph 123, infra).

121. If therefore any part of the price of the works has been paid, it is likely that some part of these expenses has been recovered. Indeed, if these costs have been built into items which are paid early, a substantial part or even all of these costs may have been recovered.

122. If these items were the subject of an advance payment, again they may have been recovered in their entirety at an early stage of the project. Here of course there is an additional complication, since the advance payments will be credited back to the employer - see paragraph 66, supra - during the course of the work. In this event, the Panel is thrown back onto the question of where in the contractor's prices payment for these items was intended to be.

123. In all of these situations, it is necessary to avoid double-counting. By this the Panel means the situation where the contractor is specifically claiming, as a separate item, elements of overhead which, in whole or in part, are already covered by the payments made or claims raised for work done.

124. The same applies where there are physical losses at a branch or indeed a site office or camp. These losses are properly characterised, and therefore claimable, if claimable at all, as losses of tangible assets.

3. Loss of profits on a particular project

125. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

126. As will be seen from the observations at paragraphs 111 to 119, supra, the expression "lost profits" is an encapsulation of quite a complicated concept. In particular, it will be appreciated that achieving profits or suffering a loss is a function of the risk margin and the actual event.

127. The qualification of "margin" by "risk" is an important one in the context of construction contracts. These contracts run for a considerable period of time; they often take place in remote areas or in countries where the environment is hostile in one way or another; and of course they are subject to political problems in a variety of places - where the work is done, where materials, equipment or labour have to be procured, and along supply routes. The surrounding circumstances are thus very different and generally more risk prone than is the case in the context of, say, a contract for the sale of goods.

128. In the view of this Panel it is important to have these considerations in mind when reviewing a claim for lost profits on a major construction project. In effect one must review the particular project for what might be called its "loss possibility". The contractor will have assumed risks. He will have provided a margin to cover these risks. He will have to demonstrate a substantial likelihood that the risks would not occur or would be overcome within the risk element so as to leave a margin for actual profit.

129. This approach, in the view of this Panel, is inherent in the thinking behind paragraph 5 of Governing Council decision 15. This paragraph expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

130. In the light of the above analysis, and in conformity with the two Governing Council decisions cited above, this Panel requires the following from those construction and engineering claimants that seek to recover for lost profits. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. It is not sufficient to prove that there would have been a "profit" at some stage before the completion of the project. Such a proof would only amount to a demonstration of a temporary credit balance. This can even be achieved in the early stages of a contract, for example where the pricing has been "front-loaded" for the express purpose of financing the project.

131. Instead, the claimant must lodge sufficient and appropriate evidence to show that the contract would have been profitable as a whole. Such evidence would include projected and actual financial information relating to the relevant project, such as audited financial statements, budgets, management accounts, turnover, original bids and tender sum analyses, time schedules drawn up at the commencement of the works, profit/loss statements, finance costs and head office costs prepared by or on behalf of

the claimant for each accounting period from the first year of the relevant project to March 1993. The claimant should also provide: original calculations of profit relating to the project and all revisions to these calculations made during the course of the project; management reports on actual financial performance as compared to budgets that were prepared during the course of the project; evidence demonstrating that the project proceeded as planned, such as monthly/periodic reports, planned/actual time schedules, interim certificates or account invoices, details of work that was completed but not invoiced by the claimant, details of payments made by the employer and evidence of retention amounts that were recovered by the claimant. In addition, the claimant should provide evidence of the percentage of the works completed at the time work on the project ceased.

4. Loss of profits for future projects

132. Some claimants say they would have earned profits on future projects, not let at the time of Iraq's invasion and occupation of Kuwait. Such claims are of course subject to the sorts of considerations set out by this Panel in its review of claims for lost profits on individual projects. In addition, it is necessary for such a claimant to overcome the problem of remoteness. How can a claimant be certain that it would have won the opportunity to carry out the projects in question? If there was to be competitive tendering, the problem is all the harder. If there was not to be competitive tendering, what is the basis of the assertion that the contract would have come to the claimant?

133. Accordingly, in the view of this Panel, for such a claim to warrant a recommendation, it is necessary to demonstrate by sufficient documentary and other appropriate evidence a history of successful (i.e., profitable) operation, and a state of affairs which warrants the conclusion that the hypothesis that there would have been future profitable contracts is well founded. Among other matters, it will be necessary to establish a picture of the assets that were being employed so that the extent to which those assets would continue to be productive in the future can be determined. Balance sheets for previous years will have to be produced, along with relevant strategy statements or like documents which were in fact utilised in the past. The current strategy statement will also have to be provided. In all cases, this Panel will be looking for contemporaneous documents rather than ones that have been formulated for the purpose of the claim; although the latter may have a useful explanatory or demonstrational role.

134. Such evidence is often difficult to obtain; and accordingly in construction cases such claims will only rarely be successful. And even where there is such evidence, the Panel is likely to be unwilling to extend the projected profitability too far into the future. The political exigencies of work in a troubled part of the world are too great to justify looking many years ahead.

K. Loss of monies left in Iraq

1. Funds in bank accounts in Iraq

135. Numerous claimants seek to recover compensation for funds on deposit in Iraqi banks. Such funds were of course in Iraqi dinars and were subject to exchange controls.

136. The first problem with these claims is that it is often not clear that there will be no opportunity in the future for the claimant to have access to and to use such funds. Indeed, many claimants, in their responses to interrogatories or otherwise have modified their original claims to remove such elements, as a result of obtaining access to such funds after the initial filing of their claim with the Commission.

137. Second, for such a claim to succeed it would be necessary to establish that in the particular case, Iraq would have permitted the exchange of such funds into hard currency for the purposes of export. For this, appropriate evidence of an obligation to this effect on the part of Iraq is required. Furthermore, this Panel notes that the decision to deposit funds in banks located in particular countries is a commercial decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved.

138. This Panel, in analysing the claims presented to it to date concludes that, in most cases, it will be necessary for a claimant to demonstrate (in addition to such matters as loss and quantum) that:

(a) the relevant Iraqi entity was under a contractual or other specific duty to exchange those funds for convertible currencies;

(b) Iraq would have permitted the transfer of the converted funds out of Iraq; and

(c) this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

139. Absent proof of these aspects of the matter, it is difficult to see how the claimant can be said to have suffered any "loss". If there is no loss, this Panel is unable to recommend compensation.

2. Petty cash

140. Exactly the same considerations apply to claims for petty cash left in Iraq in Iraqi dinars. These monies were left in the offices of claimants when they departed from Iraq. The circumstances in which the money was left behind vary somewhat; and the situation which thereafter obtained also varies - some claimants contending that they returned to Iraq but the monies were gone; and others being unable to return to Iraq and establish the position. In these different cases, the principle seems to

this Panel to be the same. Claimants in Iraq needed to have available sums (which could be substantial) to meet liabilities which had to be discharged in cash. These sums necessarily consisted of Iraqi dinars. Accordingly, absent evidence of the same matters as are set out in paragraph 138, supra, it will be difficult to establish a "loss", and in those circumstances, this Panel is unable to recommend compensation.

3. Customs deposits

141. In this Panel's understanding, these sums are paid, nominally at least, as a fee for permission to effect a temporary importation of plant, vehicles or equipment. The recovery of these deposits is dependent on obtaining permission to export the relevant plant, vehicles and equipment.

142. The Panel further understands that such permission was hard to obtain in Iraq prior to Iraq's invasion and occupation of Kuwait. Accordingly, although defined as a temporary exaction, it was often permanent in fact, and no doubt contractors experienced in the subtleties of working in Iraq made suitable allowances. And no doubt they were able to, or expected to, recover these exactions through payment for work done. Once the invasion and occupation of Kuwait had occurred, obtaining s uch permission to export became appreciably harder. Indeed, given the trade embargo, a necessary element would have been the specific approval of the Security Council.

143. In the light of the foregoing, it seems to the Panel that claims to recover these duties need to be supported by sufficient evidentiary material, going to the issue of whether, but for Iraq's invasion and occupation of Kuwait, such permission would, in fact or on a balance of probabilities, have been forthcoming.

144. Absent such evidence and leaving aside any question of double-counting, (see paragraph 123, supra), the Panel is unlikely to be able to make any positive recommendations for compensating unrecovered customs deposits made for plant, vehicles and equipment used at construction projects in Iraq.

L. Tangible property

145. With reference to losses of tangible property located in Iraq, decision 9 provides that where direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation (decision 9, paragraph 12). Typical actions of this kind would have been the expropriation, removal, theft or destruction of particular items of property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation. Decision 9 furthermore provides that in a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from Iraq's invasion and occupation (decision 9, paragraph 13).

146. Many of the construction and engineering claims that come before this Panel are for assets that were confiscated by the Iraqi authorities in 1992 or 1993. Here the problem is one of causation. By the time of the event, Iraq's invasion and occupation of Kuwait was over. Liberation was a year or more earlier. Numerous claimants had managed to obtain access to their sites to establish the position that obtained at that stage. In the cases the subject of this paragraph, the assets still existed. However, that initially satisfactory position was then overtaken by a general confiscation of assets by Iraqi authorities. While it sometimes seems to have been the case that this confiscation was triggered by an event which could be directly related to Iraq's invasion and occupation of Kuwait, in the vast majority of the claims that this Panel has seen, this was not the case. It was simply the result of a decision on the part of the authorities to take over these assets. This Panel has difficulty in seeing how these losses were caused by Iraq's invasion and occupation of Kuwait. On the contrary, it appears that they stem from an wholly independent event and accordingly are outside the jurisdiction of the Commission.

M. Payment or relief to others

147. Paragraph 21(b) of decision 7 specifically provides that losses suffered as a result of "the departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Consistent with decision 7, therefore, the Panel finds that evacuation and relief costs incurred in assisting employees in departing from Iraq are compensable to the extent proven.

148. Paragraph 22 of Governing Council decision 7 provides that "payments are available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

149. In the Fourth Report, this Panel found that the costs associated with evacuating and repatriating employees between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation, are in principle, compensable.

150. Many claimants do not provide a documentary trail detailing to perfection the expenses incurred in caring for their personnel and transporting them (and, in some instances, the employees of other companies who were stranded) out of a theatre of hostilities.

151. In these cases this Panel considers it appropriate to accept a level of documentation consistent with the practical realities of a difficult, uncertain and often hurried situation, taking into account the concerns

necessarily involved. The loss sustained by claimants in these situations is the very essence of the direct loss suffered which is stipulated by Security Council resolution 687 (1991). Accordingly, the Panel uses its best judgement, after considering all relevant reports and the material at its disposal, to arrive at an appropriate recommendation for compensation.

Annex IX

UNITED NATIONS

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Security Council

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S/AC.26/Dec.104 (2000)
29 September 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the tenth instalment of "E3" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the tenth instalment of "E3" claims, covering 17 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in table 14 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Belgium	-	1	12,168,700	nil
Canada	-	1	159,718,942	nil
Egypt	-	2	40,221,240	nil

1/ The text of the report appears in document S/AC.26/2000/18.

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
France	1	1	46,095,259	4,921,519
Germany	-	1	16,635,422	nil
Jordan	-	3	4,036,707	nil
Philippines	1	-	288,817	2,880
Poland	1	-	51,683,454	395,514
United Kingdom	2	-	13,061,105	4,787,996
United States	1	2	45,212,172	6,962,766
Total	6	11	389,121,818	17,070,675

3. Decides also, pursuant to article 41 of the Rules, to approve the amount of the corrected award for one claim in the fourth instalment of "E3" claims. The aggregate amount of the corrected award, based on the recommendations contained in paragraphs 615 and 616 of the report are as follows:

Fourth instalment correction

Country	Previous recommended award (US$)	Corrected recommended award (US$)
Singapore	2,824,426	3,150,276

4. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec.100 (2000)),

5. Recalls that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex X

UNITED NATIONS

S

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29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTEENTH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning seventeen claims included in the fourteenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the fourteenth instalment

4. On 7 February 2000, the Panel issued the procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of the date of 7 February 2000.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the

claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-ninth report of the Executive Secretary issued on 11 November 1999 in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants to file unsolicited supplements up to and including 11 May 1998. A number of the claimants included in the fourteenth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to arithmetical and typographical errors.

D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) Eteco S.A., a corporation organised according to the laws of Belgium, which seeks compensation in the amount of United States dollars (USD) 687,464;

(b) Mohamed Ahmed Mohamed Abdel Maksoud, an individual personal company organised according to the laws of Egypt, which seeks compensation in the amount of USD 1,913,748;

(c) Germot International S.A., a corporation organised according to the laws of France, which seeks compensation in the amount of USD 601,879;

(d) Kyudenko Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 920,117;

(e) Shimizu Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 1,465,455;

(f) Karim Bennani and Partners, a corporation organised according to the laws of Morocco, which seeks compensation in the amount of USD 2,892,403;

(g) Petrogas, Gas-Systems B.V., a corporation organised according to the laws of the Netherlands, which seeks compensation in the amount of USD 1,242,225;

(h) Institute Hydroproject, a public joint-stock company organised according to the laws of the Russian Federation, which seeks compensation in the amount of USD 1,596,882;

(i) SwedPower AB, a corporation organised according to the laws of Sweden, which seeks compensation in the amount of USD 447,890;

(j) MŞM-Endüstri AŞ, a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 68,196;

(k) Sezai Türkeş Feyzi Akkaya Construction Company, a joint-stock corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 506,171;

(l) Alfred McAlpine Services and Pipelines Ltd., a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 1,191,952;

(m) Mivan Overseas Limited, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 5,471,045;

(n) Mivan Overseas Limited and Interiors International Limited (joint claimants), corporations organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seek compensation in the amount of USD 6,286,800;

(o) The Morris Singer Foundry Limited (in administrative receivership), a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 1,052,019;

(p) Rotary (International) Limited, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 8,539,754; and

(q) Sutton Services International Limited, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 148,726.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

11. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The "arising prior to" clause

12. In paragraphs 79-81 of its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

F. Date of loss

18. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

19. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, 2 August 1990.

H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the

appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Evidentiary requirements

28. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there

"will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

29. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

30. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "article 34 notification"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

31. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. ETECO S.A.

32. Eteco S.A. ("Eteco") is a publicly owned company registered in Belgium. Eteco seeks compensation in the amount of 22,071,023 Belgian francs (BEF) (USD 687,464) for contract losses, loss of tangible property, payment or relief to others, other losses and interest.

Table 1. Eteco's claim

Claim element	Claim amount (USD)
Contract losses	118,678
Loss of tangible property	73,864
Payment or relief to others	305,586
Other losses	17,537
Interest	171,799
Total	687,464

A. Contract losses

1. Facts and contentions

33. Eteco seeks compensation in the amount of BEF 3,810,166 (USD 118,678) for contract losses allegedly incurred in connection with a sub-contract (the "Sub-Contract"), entered into on 6 April 1988, for the internal finishing works and external marble works at the Al Sijood Palace in Iraq. At the time of Iraq's invasion of Kuwait, Eteco was engaged in the performance of the Sub-Contract for a company incorporated in the United Kingdom, Mivan Overseas Limited ("Mivan").

34. Under the Sub-Contract, the agreed period for performance of the works was from March 1988 to November 1989. Due to delays in the progress of the works, completion of the Al-Sijood Palace was considerably delayed.

35. Eteco's claim for contract losses relates to manufactured goods (marble pieces) that were ordered from Europe to be used in the provision of services under the Sub-Contract. The manufactured goods were paid for by Eteco, however, they were allegedly not permitted to be shipped to Iraq from Europe due to the trade embargo imposed on Iraq. Eteco alleges that it has not been reimbursed by Mivan for the purchase price of the goods.

2. Analysis and valuation

36. The Panel notes that in paragraph 6 of decision 9 (S/AC.26/1992/9), the Governing Council set out guidelines for awarding compensation for business losses caused by Iraq's invasion and occupation of Kuwait where the trade embargo and related measures were also a cause. In decision

the Governing Council stated: "Compensation will be provided to the extent that Iraq's unlawful invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which is separate and distinct from the trade embargo and related measures".

37. The Panel finds that Eteco did not demonstrate that its contract losses directly resulted from Iraq's invasion and occupation of Kuwait. Eteco did not demonstrate that its inability to ship the goods, and Mivan's subsequent failure to pay for the goods, was the direct result of Iraq's invasion and occupation of Kuwait. Nor did Eteco demonstrate that Mivan was rendered unable to pay through insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait. Eteco failed to establish that Iraq's invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which was separate and distinct from the trade embargo and related measures.

3. Recommendation

38. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

39. Eteco seeks compensation in the amount of BEF 2,371,397 (USD 73,864) for loss of tangible property. The claim is for the alleged loss of equipment and machinery, furniture and vehicles from its project sites in Iraq.

40. Eteco alleges that when it left Baghdad in October 1990, all of its tangible property was stocked in its rented guesthouse. Upon its return, nine years later, all of its property was missing.

2. Analysis and valuation

41. Eteco provided as evidence of its alleged losses invoices and purchase receipts for a portion of the tangible property loss claim. However, Eteco failed to provide evidence of the presence of the claimed items in Iraq prior to 2 August 1990.

42. With respect to claims for physical assets in Iraq on 2 August 1990, the Panel has held that a claimant must establish its ownership, the value and the presence of such physical assets in Iraq.

43. The Panel finds that, although Eteco provided evidence of ownership of some of the items of tangible property, it failed to provide sufficient evidence of the presence of the tangible property in Iraq.

3. Recommendation

44. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

45. Eteco seeks compensation in the amount of BEF 9,810,850 (USD 305,586) for payment or relief to others. The claim is for salaries paid to Eteco's employees after Iraq's invasion and occupation of Kuwait until the time of their repatriation, other expenses incurred during this period, such as subsistence and accommodation, and the costs of repatriating its European workers.

(a) Salaries

46. Eteco claims BEF 6,195,138 for salaries it allegedly paid to its staff who were unable to leave Iraq. The claimed amount includes an administration fee and advance payments made to Eteco's employees.

(b) Accommodation and pocket money

47. Eteco claims BEF 1,045,500 for the cost of rent, BEF 1,908,400 for food and fuel and BEF 503,316 for "pocket money".

(c) Repatriation expenses

48. Eteco claims USD 300 for the cost of repatriation of one person from Baghdad to Amman on 25 August 1990 and USD 4,607 for the cost of repatriation of 24 people from Baghdad to Amman on 25 October 1990.

2. Analysis and valuation

49. Eteco provided as evidence of its alleged losses copies of invoices, certificates from a chartered accountant, a list of names of the employees who were repatriated, a copy of a bank statement, a summary of expense claim forms, extracts from its cash book, and a partially translated application form for the conversion of foreign currency.

(a) Salaries

50. With regard to salary payments, the Panel finds that Eteco failed to demonstrate that the salary payments would not have been incurred under normal circumstances.

51. With regard to the administration fee and the advances paid to the European workers, the Panel finds that Eteco failed to provide sufficient evidence to support its claim.

(b) Accommodation and "pocket money"

52. With regard to the accommodation and "pocket money" expenses, the Panel finds that Eteco failed to provide sufficient evidence to support its claim and failed to show how these costs would not have been incurred under normal circumstances.

(c) Repatriation expenses

53. With regard to repatriation expenses, the Panel finds that Eteco failed to provide sufficient evidence to support its claim.

3. Recommendation

54. The Panel recommends no compensation for payment or relief to others.

D. Other losses

55. Eteco seeks compensation in the amount of BEF 563,015 (USD 17,537) for other losses. Eteco claims BEF 128,280 for the cost of accident insurance premiums and BEF 434,735 for the cost of war risk insurance premiums.

(a) Accident insurance premiums

56. As evidence of its alleged losses, Eteco provided a declaration dated 2 January 1990 in respect of the accident insurance policy. Eteco alleges that the policy commenced on 16 April 1990. Eteco failed to explain the nature of the insurance or to identify the employees it allegedly insured. Further, Eteco failed to demonstrate that such expenditures were of a temporary and extraordinary nature.

57. The Panel recommends no compensation for the accident insurance premiums, as Eteco failed to provide sufficient evidence of its alleged loss.

(b) War risk insurance premiums

58. Eteco's claim is for premiums paid in respect of its employees in Iraq for the period 9 September to 8 October 1990 and 9 October to 8 November 1990. The risks covered under the policy include death, permanent disability and medical fees. The number of employees covered under the war risk insurance policy accords with the number of Eteco's employees in Iraq during the period of coverage.

59. The Panel finds that Eteco's loss regarding the premiums for war risk insurance was a direct result of Iraq's invasion and occupation of Kuwait and that such expenditures were of a temporary and extraordinary nature.

60. The Panel finds that Eteco provided adequate evidence of the cost of the premiums as well as proof of payment in the form of bank transfers.

61. The Panel finds that the amounts of BEF 235,265, for premiums paid for the period 9 September to 8 October 1990, and BEF 109,387, for premiums paid for the period 9 October to 25 October 1990 (the date on which Eteco's employees left Iraq), are compensable in principle. From these amounts, the Panel deducted the amount of BEF 73,942 to account for the refund Eteco received for the cancellation of the war risk element made under a separate

"collective accidents policy". The Panel therefore recommends compensation in the amount of BEF 270,710 (USD 8,657).

Recommendation

62. The Panel recommends compensation in the amount of USD 8,657 for premiums paid for war risk insurance.

E. Interest

63. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

F. Recommendation for Eteco

Table 2. Recommended compensation for Eteco

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	118,678	nil
Loss of tangible property	73,864	nil
Payment or relief to others	305,586	nil
Other losses	17,537	8,657
Interest	171,799	(--)
Total	687,464	8,657

64. Based on its findings regarding Eteco's claim, the Panel recommends compensation in the amount of USD 8,657. The Panel finds the date of loss to be 1 October 1990.

IV. MOHAMMED AHMED MOHAMMED ABDEL MAKSOUD

65. Mohamed Ahmed Mohamed Abdel Maksoud ("Maksoud") is classified as an "individual personal company" under the laws of Egypt.

66. In the "E" claim form, Maksoud sought compensation in the amount of USD 1,787,769 for contract losses, loss of tangible property, real property losses and interest. However, in its accompanying Statement of Claim, Maksoud claimed contract losses in the amount of USD 674,568, which increased the total amount claimed to USD 1,914,351. The Panel considered that this failure to refer to the higher total amount of USD 1,914,351 in the "E" claim form was a genuine arithmetic error on Maksoud's part and, accordingly, treated the original submission as a claim for USD 1,914,351.

67. In an unsolicited submission dated 5 July 1999, Maksoud made significant changes to its claim. Although Maksoud reduced the total claimed amount for loss of tangible property, it purported to increase the claimed amounts for contract losses and interest. The Panel has only considered those losses contained in the original claim. Where Maksoud reduced the amount of losses in the unsolicited submission, the Panel has considered the reduced amount of USD 1,913,748.

68. The Panel reclassified some elements of Maksoud's losses for the purposes of this report. The Panel, therefore, has considered the reduced amount in respect of contract losses, loss of tangible property, financial losses and interest.

Table 3. Maksoud's claim

Claim element	Claim amount (USD)
Contract losses	674,568
Loss of tangible property	502,710
Financial losses	63,270
Interest	673,200
Total	1,913,748

A. Contract losses

1. Facts and contentions

69. Maksoud seeks compensation in the amount of USD 674,568 for contract losses allegedly incurred in connection with contracts on various projects of the Government of Iraq in relation to which it was engaged as a sub-contractor to two Belgian companies, Acomal Company and Sidcontract Company, and a company incorporated in the United Kingdom, Mivan Overseas Limited ("Mivan").

70. In its original submission, Maksoud sought compensation in the amount of USD 436,710 for loss of tools and equipment from the Al-Emara project site. The claim was originally classified as a contract loss, but is more appropriately classified as a loss of tangible property.

(a) Contract with Acomal Company

71. Maksoud seeks compensation in the amount of USD 147,000 for contract losses allegedly incurred in connection with its contract with Acomal Company.

72. On 11 November 1981, Maksoud entered into a contract with Acomal Company to work as a sub-contractor on projects concerning the construction of military establishments for the Ministry of Defence of Iraq. The value of the contract was 11,000 Iraqi dinars (IQD). The works were extended for a further ten year period pursuant to a contract entered into between Maksoud and Acomal Company on 14 October 1982. The value of the contract was IQD 4,750,000. In 1986, Acomal Company became insolvent and was declared bankrupt by the Commercial Court of Gent, Belgium, on 14 June 1988. Maksoud was a creditor of Acomal Company at the time of its declared bankruptcy. Acomal Company's contract with the Ministry of Defence and the related sub-contract were assigned to Sidcontract Company. Maksoud continued to work as a sub-contractor for Sidcontract Company until its departure from Iraq on 8 September 1990.

73. Maksoud alleges that it is owed USD 147,000 resulting from Acomal Company's failure to fulfil its contract with the Government of Iraq due to its insolvency and subsequent bankruptcy.

(b) Contract with Sidcontract Company

74. Maksoud seeks compensation in the amount of USD 429,166 for contract losses allegedly incurred in respect of three separate contracts entered into with Sidcontract Company.

75. The first contract, dated 23 November 1986, was in relation to the "Mosul City Project". The total value of the contract was USD 124,000. Work under the contract commenced in 1987 and was completed in December 1988. Sidcontract Company paid Maksoud USD 51,426 in June 1987. In 1989, Sidcontract Company informed Maksoud that "no further payments were due". Maksoud seeks compensation in the amount of USD 72,576 for the outstanding payment.

76. The second contract, dated 18 August 1987, was in relation to the "Arbil site". The work was carried out by Maksoud and a third party and was completed by 3 March 1988. Maksoud seeks compensation in the amount of USD 5,508 for construction of an extra base on the site.

77. The third contract (undated) was for construction work on the Al-Emara military hospital in Basra. The contract provided for the works to be

completed by 30 March 1989. Maksoud seeks compensation in the amount of USD 351,082 for work performed under the contract, which has allegedly not been paid by Sidcontract Company.

(c) Contract with Mivan

78. On 25 January 1987, Maksoud entered into a contract with Mivan for steel erection and cladding work at the Al-Emara military hospital. Maksoud states that it completed work under this contract by 15 August 1987.

79. Maksoud seeks compensation in the amount of USD 98,402 for contract loses allegedly incurred in respect of the contract. The claimed amount is based on the total contract value less an interim payment received of USD 23,716.

2. Analysis and valuation

80. In its previous reports, the Panel has found that, in the case of contracts to which Iraq was not a party, claimants must provide specific proof that the failure of a debtor to pay was the direct result of Iraq's invasion and occupation of Kuwait.

81. The Panel finds that the age of the debts in question makes it highly unlikely that the failure of the contracting parties to pay in each case was the direct result of Iraq's invasion and occupation of Kuwait. Indeed, Maksoud did not demonstrate that the failure of the contractor, in each case, (Acomal Company, Sidcontract Company and Mivan) to pay was the direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that Maksoud failed to establish that its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

82. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

83. Maksoud seeks compensation in the amount of USD 502,710 for loss of tangible property. Maksoud claims USD 436,710 for the alleged loss of tools and equipment left on the Al-Emara military hospital site when Maksoud left Iraq and USD 66,000 for furniture and equipment left behind in a villa which was rented by Maksoud.

84. In its original submission, Maksoud sought compensation in the amount of USD 66,000 for loss of furnishings from its Baghdad villa and office. The claim was originally classified as real property losses, but is more appropriately classified as a loss of tangible property.

2. Analysis and valuation

85. Maksoud provided as evidence of its alleged losses an invoice dated 25 May 1987 for the sum of USD 1,516, relating to tools and equipment on the Al-Emara site. It also provided photographs of a hydraulic apparatus for tower construction. Maksoud failed to provide any evidence of its title to the equipment, and of the presence of the equipment in Iraq at the time of Iraq's invasion and occupation of Kuwait.

86. As evidence of Maksoud's claim for loss of furnishings, Maksoud provided two photographs. However, it failed to provide any evidence of its ownership of the furnishings.

87. In order to establish a loss of tangible property claim, this Panel has found that a claimant must submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

88. The Panel finds that Maksoud failed to submit sufficient evidence to demonstrate its title to or right to use the assets, the value and the presence of the tangible property in Iraq. The Panel finds that Maksoud failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

89. The Panel recommends no compensation for loss of tangible property.

C. Financial losses

90. Maksoud seeks compensation in the amount of USD 63,270 for loss of the amount of IQD 19,000, which was allegedly held in Maksoud's bank account with the Rafidain Bank in Iraq.

91. In its original submission, Maksoud sought compensation in the amount of USD 63,270 for loss of funds in a bank account held with the Rafidain Bank in Iraq. This claim was originally classified as a loss of tangible property, but is more appropriately classified as financial losses.

92. The only evidence provided by Maksoud are receipts from the Rafidain Bank in respect of deposits for IQD 5,000 and IQD 14,000. The receipts are dated 20 May and 20 July 1987, respectively. Maksoud failed to provide evidence of the balance of its bank account with the Rafidain Bank at 2 August 1990.

93. The Panel finds that Maksoud did not submit sufficient information or documentation to support its asserted losses. Maksoud failed to demonstrate that the account is no longer in existence or that Maksoud was denied access to the funds Further, Maksoud did not demonstrate that Iraq

was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq. Finally Maksoud did not demonstrate that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

94. The Panel recommends no compensation for financial losses.

D. Interest

95. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

E. Recommendation for Maksoud

Table 4. Recommended compensation for Maksoud

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	674,568	nil
Loss of tangible property	502,710	nil
Financial losses	63,270	nil
Interest	673,200	nil
Total	1,913,748	nil

96. Based on its findings regarding Maksoud's claim, the Panel recommends no compensation.

V. GERMOT INTERNATIONAL S.A.

97. Germot International S.A. ("Germot") is a publicly held construction corporation registered in France. Germot seeks compensation in the amount of 3,155,044 French francs (FRF) (USD 601,879) for contract losses, loss of profits, loss of tangible property and payment or relief to others.

98. In its reply to the article 34 notification, Germot included an additional claim for loss of tangible property relating to a container that was detained in Turkey en route to Iraq following Iraq's invasion and occupation of Kuwait. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Germot.

Table 5. Germot's claim

Claim element	Claim amount (USD)
Contract losses	351,550
Loss of profits	20,031
Loss of tangible property	11,446
Payment or relief to others	218,852
Total	601,879

A. Contract losses

1. Facts and contentions

99. Germot seeks compensation in the amount of FRF 1,842,823 (USD 351,550) for contract losses allegedly incurred in connection with two sub-contracts in Iraq. The first sub-contract was with a United Kingdom company, Interiors International Limited ("Interiors"), and related to the supply and execution of architectural work on the Al Sijood Palace Project in Iraq, also known as Project 304X ("Project 304X"). The second sub-contract was with an Iraqi entity, "Consulting Group", and related to the provision of architectural works on Project 304X.

(a) Sub-contract with Interiors

100. Under the terms of an agreement dated 27 October 1989, Germot was assigned sub-contract works relating to Project 304X, originally awarded to Eurisol SA BP 84 in a sub-contract dated 12 July 1988. Since Germot did not provide a copy of the sub-contract, the Panel was unable to establish the precise scope of the works. However, it appears that Germot agreed to manufacture and install fibrous plaster units on the project site.

101. At the date of the assignment of the sub-contract works to Germot, the outstanding value under the sub-contract was FRF 4,080,549.

102. Germot stated that it had completed 99 per cent of the work under the sub-contract (with a value of FRF 4,039,743) by the time of Iraq's invasion and occupation of Kuwait. It carried out no further work under the sub-contract after 2 August 1990. Germot alleges that it received payments from Interiors in the amount of FRF 2,956,326 and seeks compensation for the unpaid work in the amount of FRF 1,083,417.

(b) Sub-contract with Consulting Group

103. On 21 June 1990, Germot entered into a sub-contract with Consulting Group, which appears to be the main contractor on Project 304X. The sub-contract provided for the design and installation of plasterwork on the water garden element of Project 304X. The total value of the sub-contract was FRF 2,000,000. The sub-contract contemplated completion of the works by 15 September 1990.

104. Germot stated that its employees were detained by the Iraqi authorities after 2 August 1990 and that those employees continued to carry out works under the sub-contract. Germot calculated that it had completed 85 per cent of the work under the sub-contract (with a value of FRF 1,700,000) by the time its employees left Iraq in October 1990. Germot states that it received payments from Consulting Group in the amount of FRF 940,594 (including payments for work performed in August 1990) and seeks compensation for the unpaid work in the amount of FRF 759,406.

2. Analysis and valuation

105. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

106. In relation to the sub-contract with Interiors, the Panel notes that Consulting Group wrote to Germot on 3 November 1990 indicating that it was prepared to assume Interior's payment responsibilities if Germot completed its work on the Project. Although Germot did not complete its work, the Panel finds that this correspondence demonstrates that Germot had a direct payment demand against Consulting Group. The Panel finds that this sub-contract became a contract with Consulting Group in November 1990.

107. The Panel finds that Germot had, in each case, a contract with Iraq for the purposes of the "arising prior to" clause in paragraph 16 of the Security Council Resolution 687 (1991).

(a) Sub-contract with Interiors

108. As evidence of its claim for contract losses under the sub-contract with Interiors, Germot provided: two acceptance certificates signed by Interiors for work performed in May and June 1990; a monthly statement supporting the value of the work performed in May 1990; a letter from

Interiors to Germot dated 20 September 1990 confirming that Germot had carried out variations to the value of FRF 510,288, subject to Consulting Group's acceptance; a letter from Consulting Group dated 3 November 1990 indicating that Germot was owed FRF 897,738; and a letter from Germot to Interiors dated 19 November 1990.

109. Whilst correspondence provided by Germot indicates that there was some earlier disagreement between the parties concerning the acceptability of the work performed, the Panel finds that Consulting Group, in its letter dated 3 November 1990, acknowledged that Germot had carried out the invoiced work satisfactorily.

110. The Panel finds that the claims for work performed in May and June 1990 (including supplementary works) are within the jurisdiction of the Commission. The Panel finds that Germot provided the necessary evidence to substantiate its loss in the amount of FRF 897,738 (USD 171,259) and recommends compensation in this amount.

(b) Sub-contract with Consulting Group

111. As evidence for its claim for contract losses under the sub-contract with Consulting Group, Germot provided copies of the sub-contract, the bank guarantee and performance bond required under the sub-contract, a summary of payments received, untranslated bank statements, internal letters from one of its detained employees, and a monthly progress statement (invoice) for September 1990, which is not signed by Consulting Group. Germot was asked in the article 34 notification to provide evidence establishing that it actually performed the work under the sub-contract for which it alleges it has not been paid, such as its employees' timesheets, correspondence from Consulting Group acknowledging the work, or signed monthly statements. Germot advised that it was unable to provide further documentation, as all relevant documents were left in Iraq.

112. The Panel finds that Germot did not provide the necessary evidence to prove that it performed work under the sub-contract and that it has not received payment for this work.

113. The Panel recommends no compensation for the alleged unpaid work under the sub-contract with Consulting Group as Germot did not provide sufficient evidence to support its claims for such alleged costs.

3. Recommendation

114. The Panel recommends compensation in the amount of USD 171,259 for contract losses.

B. Loss of profits

115. Germot seeks compensation in the amount of FRF 105,000 (USD 20,031) for loss of profits in relation to the sub-contract with Consulting Group.

Germot asserts that it suffered a loss of future benefits under the sub-contract based on a gross benefit margin of 35 per cent on the balance of the unperformed value of the sub-contract, FRF 300,000. Germot stated that the figure of 35 per cent represents "the minimum percentage for a gross profit in building company for secondary works".

116. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

117. Germot provided no evidence to support its claims in relation to loss of profits apart from correspondence with French authorities and Consulting Group regarding the impossibility of completing the work under the sub-contract. Germot was requested in the article 34 notification to submit evidence such as audited financial statements, budgets, management accounts, turnover or profit/loss statements prepared by or on behalf of Germot. It provided untranslated accounts for the year ending 31 December 1990 but provided no other requested documents. The Panel finds that Germot provided insufficient evidence to substantiate its alleged loss.

118. The Panel recommends no compensation for loss of profits as Germot failed to provide sufficient evidence to substantiate its claim.

C. Loss of tangible property

119. Germot seeks compensation in the amount of FRF 60,000 (USD 11,446) for loss of tangible property. The claim is for the alleged loss of a car, a typewriter and a photocopier from the Project 304X site.

120. Germot provided no information regarding the alleged circumstances of the loss of the tangible property. Germot provided no evidence of its alleged losses. It stated that it was unable to do so because all the relevant documents were in Iraq.

121. The Panel finds that Germot did not submit any evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Iraq. The Panel finds that Germot failed to submit sufficient evidence to substantiate its loss of tangible property claim.

122. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

123. Germot seeks compensation in the amount of FRF 1,147,221 (USD 218,852) for payment or relief to others. Germot alleges that 12 of its employees were held as hostages in Iraq from August to October 1990. Germot claims FRF 367,436 for the alleged costs of the employees' salaries, FRF 20,855

for social insurance contributions and FRF 758,930 for catering and expatriation allowances during this period.

(a) Salaries and social insurance contributions

124. At the time of Iraq's invasion and occupation of Kuwait, Germot employed 12 people in Iraq carrying out work under the sub-contracts. Germot alleges that it paid the salaries and social insurance contributions of the detained employees for the months of August to October 1990 in the sum of FRF 859,428. Germot stated that, pursuant to agreements dated 2 and 14 October 1990 entered into between it and several French Governmental organisations responsible for assisting victims of acts of terrorism (the "Organisations"), the Organisations reimbursed Germot for 90 per cent of its salary payments and social insurance contributions to the eight employees who were French nationals in the amount of FRF 471,137. The agreements were not expressed to apply to the four employees who were not French nationals.

125. Germot accordingly seeks compensation for the balance of the payments to the eight employees who were French nationals and for all payments made to its four employees who were not French nationals.

126. The Panel notes that the Commission has previously awarded compensation in category "C" to four of Germot's employees for lost salary payments during their period of detention in the amount of USD 55,548 (the "lost income awards").

(b) Catering and expatriation allowances

127. The claim is for "catering and expatriation allowances" paid to the 12 employees. Germot asserted that its Iraqi agent paid these allowances in the sum of IQD 68,970 to Germot's employees and others on its behalf and at its direction. It further asserted that one of the Organisations partially reimbursed Germot the sum of FRF 275,620.

128. Germot alleges that it made a partial payment of FRF 150,000 to the agent in relation to these expenses. It expected to pay the balance to the agent when it received payment of the outstanding amounts under the two sub-contracts. Germot therefore claims the balance of the amount which it alleges its agent paid less the partial reimbursement from the Organisation.

2. Analysis and valuation

129. As evidence of its claim for the costs of salary payments and social insurance contributions, Germot provided copies of the contracts between Germot and the Organisations; correspondence regarding the payment of compensation by the Organisations; summaries of payments; and salary payment forms.

130. As evidence of its claim for catering and expatriation allowances, Germot provided originals of internal receipts containing information about the payments. Germot also submitted a letter from the agent setting out the expenses he incurred on behalf of Germot; an internal letter stating that Germot owed the agent the sum of FRF 1,034,550 for expenses which he incurred on Germot's behalf; and proof of payment of FRF 150,000 to the agent's account.

131. Germot stated in its reply to the article 34 notification that its employees worked between 2 August and the end of October 1990 on the sub-contract with Consulting Group "to occupy themselves". Germot was paid by the employer for the work carried out in August 1990. The Panel finds that the amounts claimed in respect of salary payments in August 1990 are, therefore, not compensable.

132. In relation to Germot's claim for salary payments made in September and October 1990 to its four employees who were not French nationals, the Panel finds that Germot failed to provide sufficient evidence of the payment of these amounts to the employees in September 1990, and, therefore, how it suffered any loss. In relation to October 1990, the Panel finds that Germot provided sufficient evidence that it paid these costs for two employees in the amount of FRF 24,976. The Panel refers to paragraph 126 above and notes that a reduction must be made for the previous lost income award to one of the employees. The Panel finds that his lost income award exceeds, and therefore extinguishes, Germot's claim for compensation for salary payments to him. The Panel recommends compensation in the amount of FRF 13,737 (USD 2,700) for the salary payment to the other employee who was not a French national.

133. In relation to Germot's claim for salary payments to its eight French employees made in September and October 1990, the Panel finds that Germot provided sufficient evidence that it paid these costs in the amount of FRF 45,779 for which it has not been reimbursed by the Organisations. The Panel refers to paragraph 126 above and notes that a reduction must be made for the previous lost income awards to three of the employees. The Panel finds that the lost income awards exceed, and therefore extinguish, each of Germot's claims for compensation for salary payments to the three employees. The Panel recommends compensation in the amount of FRF 26,279 (USD 5,165) for the salary payments to the remaining five French employees.

134. In relation to Germot's claim for social insurance contributions to all 12 employees, the Panel finds that Germot failed to provide sufficient evidence of the payment of these amounts to the employees, and, therefore, how it suffered any loss.

135. The Panel finds that the claim for compensation for the payment of FRF 150,000 is a claim for catering and expatriation allowances for August 1990. Germot was paid by the employer for the work carried out in August

1990. The Panel finds that the amounts claimed in respect of catering and expatriation allowances in August 1990 are, therefore, not compensable.

136. In relation to the claim for catering and expatriation allowances for September and October 1990, the Panel recommends no compensation. These expenses were incurred by Germot's Iraqi agent. Pursuant to Security Council resolution 687 (1991) and Governing Council decision 7, Iraqi entities shall not be compensated for losses incurred as a result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

137. The Panel recommends compensation in the amount of USD 7,865 for payment or relief to others.

E. Recommendation for Germot

Table 6. Recommended compensation for Germot

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	351,550	171,259
Loss of profits	20,031	nil
Loss of tangible property	11,446	nil
Payment or relief to others	218,852	7,865
Total	601,879	179,124

138. Based on its findings regarding Germot's claim, the Panel recommends compensation in the amount of USD 179,124. In relation to Germot's claim for contract losses, the Panel finds the date of loss to be 2 August 1990. In relation to Germot's claim for payment or relief to others, the Panel finds the date of loss to be 1 October 1990.

VI. KYUDENKO CORPORATION

139. Kyudenko Corporation ("Kyudenko") is a Japanese construction company. Kyudenko seeks compensation in the amount of 132,726,929 Yen (JPY) (USD 920,117) for loss of tangible property and payment or relief to others.

140. In its original submission, Kyudenko sought compensation for real property losses in the amount of JPY 121,738,314 (USD 843,940) and for other losses ("living fixtures for worker") in the amount of JPY 2,254,510 (USD 15,629). These losses have been reclassified for the purposes of this report as loss of tangible property as they relate to the loss of tangible assets from Kuwait.

Table 7. Kyudenko's claim

Claim element	Claim amount (USD)
Loss of tangible property	859,569
Payment or relief to others	60,548
Total	920,117

A. Loss of tangible property

1. Facts and contentions

141. Kyudenko seeks compensation in the amount of JPY 123,992,824 (USD 859,569) for loss of tangible property. Kyudenko was engaged as a sub-contractor to Shimizu Corporation, a Japanese corporation, on the Az-Zour South Power Station project in Kuwait (the "Project"). Kyudenko states that, at the time of Iraq's invasion and occupation of Kuwait, work on the Project had been completed and the maintenance period was under way.

142. Kyudenko's claim is for the alleged loss of spare parts, construction materials, tools and instruments, which had allegedly been stored in a warehouse on the Project site, as well as "living fixtures for worker". Kyudenko states that it ascertained its losses during an inspection at the Project site carried out in December 1991.

143. Kyudenko did not explain how the claimed amount was calculated. It appears from the documents provided by Kyudenko in support of its claim that it is claiming for items with original values in yen, French francs and Kuwaiti dinars (KWD).

2. Analysis and valuation

144. Kyudenko provided as evidence of its alleged losses a computer print-out of a list of spare parts. Further, in respect of the items with an

original value in yen, Kyudenko provided an "estimate" dated 18 July 1990 from Siemens for lighting fixtures and other spare parts with a value of JPY 10,495,236, a partially translated document showing a figure of JPY 7,916,003, a seven page partially translated list of spare parts with a stated total value of JPY 31,105,030, and a quotation from Osaka Lightning Protection & Earthing System Manufacturing Co. Ltd in respect of the grounding system for the Project.

145. In respect of the items with an original value in French francs, Kyudenko provided undated quotations for plugs, sockets and switches to be manufactured by Legrand, France.

146. In respect of the items with an original value in Kuwaiti dinars, Kyudenko provided an invoice dated 11 September 1987 from Mitsui & Shimizu Corporation showing assets with a CIF value of KWD 12,276. The invoice is made out to Thuwainy Trading Company, Kuwait.

147. Kyudenko also provided various untranslated documents and a packing list, none of which can be reconciled with the claimed amounts.

148. As evidence of its alleged losses in respect of "living fixtures for worker", Kyudenko provided a two page document in Japanese. It provided no evidence in English in support of its claim.

149. In order to establish a loss of tangible property claim, this Panel has found that a claimant must submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

150. The Panel finds that Kyudenko did not submit sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Kuwait. The Panel finds that Kyudenko failed to submit sufficient evidence to substantiate its claim for loss of tangible property.

3. Recommendation

151. The Panel recommends no compensation for loss of tangible property.

B. Payment or relief to others

152. Kyudenko seeks compensation in the amount of JPY 8,734,105 (USD 60,548) for payment or relief to others. The claim is for the alleged costs of the detention of one of its employees, (who was released in December 1991), the temporary and compulsory repatriation of its Philippine workers and "other relief activities".

153. Kyudenko provided as evidence of its alleged losses various untranslated documents in Japanese. It provided no evidence in English in support of its claim for payment or relief to others.

154. The Panel recommends no compensation for payment or relief to others.

C. Recommendation for Kyudenko

Table 8. Recommended compensation for Kyudenko

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	859,569	nil
Payment or relief to others	60,548	nil
Total	920,117	nil

155. Based on its findings regarding Kyudenko's claim, the Panel recommends no compensation.

VII. SHIMIZU CORPORATION

156. Shimizu Corporation ("Shimizu") is a Japanese construction company. Shimizu seeks compensation in the amount of JPY 211,391,858 (USD 1,465,455) for loss of tangible property and payment or relief to others.

157. In its original submission, Shimizu sought compensation for real property losses in the amount of JPY 108,489,481 (USD 752,094). This loss has been reclassified for the purposes of this report as loss of tangible property as it relates to the loss of tangible assets from Iraq and Kuwait.

Table 9. Shimizu's claim

Claim element	Claim amount (USD)
Loss of tangible property	752,094
Payment or relief to others	713,361
Total	1,465,455

A. Loss of tangible property

1. Facts and contentions

158. Shimizu seeks compensation in the amount of JPY 108,489,481 (USD 752,094) for loss of tangible property. The claim is for the alleged loss of construction plant and equipment, office and accommodation furniture and permanent material, which Shimizu states was either destroyed or stolen from its projects in Kuwait and Iraq.

(a) Project in Kuwait

159. Shimizu was engaged as a contractor on the Az-Zour South Power Station project in Kuwait. Shimizu states that, at the time of Iraq's invasion and occupation of Kuwait, work on the Az-Zour South Power Station project had been completed and the maintenance period was under way. The handover of workshop equipment and spare parts was also taking place as part of the final completion of the project.

160. Shimizu states that it had to abandon the project site due to Iraq's invasion and occupation of Kuwait and that it left behind construction plant and equipment, office and accommodation furniture and materials for the project.

161. Shimizu states that it ascertained that the property had either been stolen or destroyed during an inspection at the project site carried out after the cessation of hostilities.

(b) Projects in Iraq

162. Shimizu states that it was involved in several projects in Iraq. In its claim submission, it identifies two of these as "high rise project" and "office building project". No further details are given. It states that, at the time of Iraq's invasion and occupation of Kuwait, all of its projects in Iraq were completed and had been handed over to the owner. However, the final settlements for the projects were outstanding and Shimizu was in the process of obtaining final documentation to finalise the contracts.

163. The claim is for the alleged loss of construction plant and equipment and office and accommodation furniture used for the projects.

2. Analysis and valuation

164. In respect of its claim for construction plant and equipment in Kuwait, Shimizu provided a computer print-out in Japanese, which appears to be a list of assets with a value of JPY 25,539,731. The descriptions on the list are untranslated. Shimizu annotated the list in order to designate the following categories of loss: "used for the repatriation of third country staff and labour" and "taken by Iraq at Jordanian border", "existing on the site or storage yard but not useful", and "missing".

165. In respect of its claim for construction plant and equipment in Iraq, Shimizu provided a list of six items of plant and machinery in respect of two project sites. The list appears to contain extracts of an asset register, however, Shimizu provided no translations of the descriptions.

166. The lists referred to above purport to show the original purchase price and the "present value" of the plant and equipment. Shimizu provided no explanation as to how these values were calculated.

167. Shimizu provided no documentation to support the validity of the data on the lists. It provided no evidence of its title to the construction plant and equipment, nor of the value and the presence of the tangible property in Kuwait or Iraq.

168. In respect of its claim for office and accommodation furniture, Shimizu provided lists of the assets giving a description, purchase price, quantity, depreciation and value at 2 August 1990. Shimizu provided no documentation to support the validity of the data on the lists. It provided no evidence of its title to the office and accommodation furniture. Nor did it provide evidence of the value and the presence of the tangible property in Kuwait or Iraq.

169. In respect of its claim for permanent material for the project in Kuwait, Shimizu provided copies of three invoices dated between 17 May 1989 and 9 May 1990. Each invoice was issued by the Mitsui & Shimizu Consortium and was made out to Ministry of Electricity and Water, Government of

Kuwait. They each show payment terms of "CIF Kuwait". The invoices are accompanied by packing lists.

170. The Panel finds that Shimizu did not submit sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Kuwait or Iraq. The Panel finds that Shimizu failed to submit sufficient evidence to substantiate its claim.

3. Recommendation

171. The Panel recommends no compensation for loss of tangible property.

B. Payment or relief to others

1. Facts and contentions

172. Shimizu seeks compensation in the amount of JPY 102,902,377 (USD 713,361) for payment or relief to others.

(a) Project in Kuwait

173. Shimizu states that, at the time of Iraq's invasion and occupation of Kuwait, 256 of its employees were located in Kuwait. Of these employees, three were Japanese nationals and the remainder were Indian, Bangladeshi, Filipino, Pakistani and British nationals, (referred to by Shimizu as "third country staff").

174. Shimizu states that the three Japanese employees were transferred from Kuwait to Baghdad on 22 August 1990, where they were detained as hostages until 11 December 1990. The remaining employees were transferred from Kuwait, via Baghdad, to Amman, on 21 August 1990. They arrived in Amman on 26 August 1990, from where they were repatriated to their home countries on 30 August 1990. Shimizu states that it sent two of its staff from its Tokyo head office to Amman on 25 August 1990 to assist in the repatriation process. Those employees were also repatriated on 30 August 1990.

175. Shimizu seeks compensation in the amount of JPY 85,505,126 for "repatriation expenses of third country staff and labour" and JPY 13,920,389 for "repatriation expenses of Japanese staff".

(i) Repatriation expenses of "third country staff and labour"

176. This is a claim for expenses in the amount of JPY 15,611,878 allegedly incurred in respect of the airfares purchased for repatriating Shimizu's employees who were not Japanese nationals ("airfare from Amman to home country"), as well as costs in the amount of JPY 69,893,248 allegedly paid to Shimizu's employees who were not Japanese nationals after they were dismissed by Shimizu ("final settlement of salary due to dismissal").

(ii) Repatriation expenses of Japanese staff

177. This is a claim for expenses in the amount of JPY 53,718 allegedly incurred in respect of the airfares from Kuwait to Baghdad purchased for Shimizu's employees who were Japanese nationals, as well as salary payments in the amount of JPY 13,866,671 for the five month period of their detention (August to December 1990).

(b) Projects in Iraq

178. Shimizu states that three of its employees were repatriated from Amman to Dhaka and one of its employees (a Japanese national) was detained in Iraq until 27 August 1990, before being repatriated from Amman on 29 August 1990.

179. Shimizu seeks compensation in the amount of JPY 1,211,291 for "repatriation expenses of third country staff and labour" and JPY 2,265,571 for "repatriation expenses of Japanese staff".

(i) Repatriation expenses of "third country staff and labour"

180. This is a claim for the costs of repatriating three of Shimizu's employees from Amman to Dhaka. It includes amounts allegedly paid in respect of bus transportation from Jordan to Iraq, hotel charges in Amman, taxi fares and airfares from Amman to the employees' home countries.

(ii) Repatriation expenses of Japanese staff

181. This is a claim for the costs of repatriating one of Shimizu's employees (a Japanese national) from Amman to Tokyo. It includes amounts allegedly paid in respect of hotel charges in Amman, airport tax at Amman, airfares from Amman to Tokyo, and salary for the period of the employee's detention in Iraq during August 1990.

2. Analysis and valuation

(a) Project in Kuwait

(i) Repatriation expenses of "third country staff and labour"

a. "Airfare from Amman to home country"

182. Shimizu provided as evidence of its alleged losses relating to "airfare from Amman to home country" statements of, and applications for, remittance relating to a plane chartered from Amman to New Delhi, the transportation of 52 workers from New Delhi to Bombay, and the airfares for 28 Bangladeshi workers from Amman to Dhaka.

183. Shimizu provided various other invoices and receipts, dated 30 August and 1 September 1990, supporting the statements of remittance referred to above. It also provided an aircraft charter agreement dated 29 August 1990

for the charter of an Airbus A310 for a journey from Amman to Delhi on 30 August 1990.

184. The Panel finds that the statements of remittance and other supporting documentation provided by Shimizu constitute sufficient evidence of the expenses incurred by it in relation to airfares for the repatriation of its employees. The Panel notes, however, that the amount claimed for "Air fare for 28 Bangladeshi workers from Amman to Dhaka" was incorrectly calculated by Shimizu, and should be JPY 2,299,269 rather than JPY 2,678,405.

185. However, given that the project had been completed and there is no claim for contractual payments due and owing, the Panel finds that Shimizu failed to demonstrate that the expenses it incurred were in excess of the expenses it would have incurred ordinarily in repatriating its employees assuming normal completion of the contract works.

186. The Panel, therefore, recommends no compensation for "airfare from Amman to home country".

b. "Final settlement of salary due to dismissal"

187. Shimizu provided as evidence of its alleged losses relating to the "final settlement of salary due to dismissal", statements of, and applications for, remittance relating to amounts allegedly paid pursuant to final settlement agreements reached with 199 Indian employees, 47 Bangladeshi employees and six other individuals (two Indian nationals and four Pakistani nationals).

188. Shimizu provided other schedules and correspondence in support of the statements of remittance referred to above showing that the amounts had been paid.

189. The evidence provided by Shimizu shows that the amount claimed for "final settlement of salary due to dismissal" is calculated as the monthly salary for each employee for the period from 1 July 1990 to a specified date, (which appears to be the earlier of the date the relevant employee left Kuwait or 10 September 1990). To this amount, indemnities, overtime and other amounts owing to the employee have been added and the salary for July 1990 and overtime have been deducted.

190. However, the Panel finds that Shimizu failed to demonstrate other important aspects of its calculations, including the final date of employment for each employee. It also did not explain the reason for significant differences between salary payments before 2 August 1990 and those made after that date. The Panel accordingly finds that Shimizu failed to provide sufficient evidence of its loss.

(ii) Repatriation expenses of Japanese staff

191. Shimizu provided what appear to be payroll documents, purportedly relating to three Japanese members of staff. However, it did not provide English translations of these documents.

192. The Panel recommends no compensation for repatriation expenses of Japanese staff.

(b) Projects in Iraq

(i) Repatriation expenses of "third country staff and labour"

193. Shimizu provided as evidence of its alleged losses relating to the repatriation expenses of "third country staff and labour" invoices, copies of plane tickets and other documentation. The evidence provided shows that the repatriation took place from Amman on 15 August 1990. However, all of the invoices provided by Shimizu in support of this loss item are payable by Mitsubishi Corporation, and not by Shimizu. Shimizu did not explain the relevance of the reference to Mitsubishi Corporation and did not provide evidence that it paid the claimed amounts.

(ii) Repatriation expenses of Japanese staff

194. Shimizu provided as evidence of its alleged losses relating to the repatriation expenses of its Japanese employee invoices, copies of plane tickets and other documentation. The evidence provided shows that the repatriation took place from Amman on 28 August 1990. However, all of the invoices provided by Shimizu in support of this loss item are payable by Mitsubishi Corporation, and not by Shimizu. Shimizu did not explain the relevance of the reference to Mitsubishi Corporation and did not provide evidence that it paid the claimed amounts.

195. Shimizu provided as evidence of its alleged losses relating to the salary expenses of its Japanese employee untranslated payroll documents, purportedly relating to the employee who is the subject of its claim.

3. Recommendation

196. The Panel recommends no compensation for payment or relief to others.

C. Recommendation for Shimizu

Table 10. Recommended compensation for Shimizu

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	752,094	nil
Payment or relief to others	713,361	nil
Total	1,465,455	nil

197. Based on its findings regarding Shimizu's claim, the Panel recommends no compensation.

VIII. KARIM BENNANI AND PARTNERS

198. Karim Bennani and Partners ("Karim Bennani") is a limited liability company incorporated in Morocco specialising in Moroccan craftwork and decoration for the Government of Iraq. In its original submission Karim Bennani sought compensation in the amount of USD 3,238,700 for contract losses, loss of profits, loss of tangible property, payment or relief to others, other losses and loss of interest.

199. In an unsolicited submission dated 14 September 1998, Karim Bennani sought to increase the amounts claimed for loss of profits and financial losses. In its subsequent reply to the article 34 notification, Karim Bennani reduced the amount claimed for payment or relief to others and loss of profits but sought to increase the amount claimed for financial losses. The Panel has only considered those losses contained in the original claim except where such losses have been reduced by Karim Bennani. Where Karim Bennani reduced the amount of losses in its reply to the article 34 notification, the Panel has considered the reduced amount.

200. The Panel, therefore, has considered the reduced amount of USD 2,892,403.

Table 11. Karim Bennani's claim

Claim element	Claim amount (USD)
Contract losses	720,000
Loss of profits	1,515,000
Loss of tangible property	66,000
Payment or relief to others	331,403
Financial losses	260,000
Total	2,892,403

A. Contract losses

1. Facts and contentions

201. Karim Bennani seeks compensation in the amount of USD 720,000 for contract losses. The claim is for contract penalties in the amount of USD 100,000 and "benefit margin for unpaid contract" in the amount of USD 620,000, allegedly incurred in connection with several contracts with the Government of Iraq (acting through the Embassy of Iraq in Rabat, Morocco) (the "Employer").

202. In its original submission, Karim Bennani sought compensation for contract penalties imposed by the Employer in the amount of USD 100,000.

Karim Bennani classified this loss as "business transaction or course of dealing". The loss has been reclassified for the purposes of this report as a contract loss.

203. Karim Bennani entered into a series of contracts with the Employer between August 1989 and May 1990 pursuant to which it agreed to supply copper craftwork to, and to carry out carving and engraving and plaster works in, presidential palaces in Iraq. The projects in respect of which Karim Bennani contracted with Iraq to carry out work included Project 304X, Project 158, the Gaiza Project, the Kasr Sakr Project and the "Plaster Project".

204. Karim Bennani sent craftsmen to Iraq for the purpose of carrying out work on the projects. On 2 August 1990, Karim Bennani had 370 craftsmen working at different sites throughout Iraq.

205. After Iraq's invasion of Kuwait, the craftsmen returned to Morocco via Jordan and Syria. Karim Bennani states that all of the craftsmen had returned to Morocco by September 1990.

206. When the craftsmen arrived back in Morocco, they made claims against Karim Bennani. However, the banks refused to finance Karim Bennani and, since Karim Bennani had allegedly received no payments from Iraq, it experienced cashflow problems, which meant that it could not pay the craftsmen's wages. The workers invaded Karim Bennani's premises and assaulted staff. One building was occupied and another was destroyed by fire.

207. After the cessation of hostilities in Iraq, work on the presidential palaces was not resumed because the palaces had been destroyed. Furthermore, Karim Bennani allegedly lacked sufficient funds to recommence work and does not believe it could have persuaded the craftsmen to return to Iraq.

208. Karim Bennani alleges that the Government of Iraq owed it an amount of USD 1,238,321 as at 2 August 1990.

(a) Contract penalties

209. The claim is for penalties in the amount of USD 100,000 allegedly imposed by the Employer due to the fact that Karim Bennani did not complete the work under its contracts with the Government of Iraq. Karim Bennani asserts that the Employer decided to reduce the debt owed to Karim Bennani by USD 100,000 by way of a penalty because Karim Bennani's craftsmen left Iraq following Iraq's invasion and occupation of Kuwait.

210. Karim Bennani provided as evidence of its alleged losses two letters from the Embassy of Iraq in Rabat. The first letter dated 11 October 1990 includes a list of craftsmen who were "sent back from Iraq as they refused to work and insisted on leaving, thus infringing the provisions of the

contract." The second letter dated 24 October 1990 states that USD 100,000 would be deducted from Karim Bennani's account as the Employer considered the abandonment of work to be a breach of contract.

(b) "Benefit margin for unpaid contract"

211. The claim for "benefit margin for unpaid contract" in the amount of USD 620,000 is a claim for the 50 per cent profit margin on the outstanding debt allegedly owed to it by Iraq. The amount of the outstanding debt was allegedly USD 1,238,321. Karim Bennani states that the "benefit margin" on its contracts with Iraq was 50 per cent.

212. Karim Bennani submitted evidence of the outstanding debt in the amount of USD 1,238,321. The Employer also acknowledged the full amount of this debt in a letter dated 19 December 1992.

213. Karim Bennani stated that on 24 October 1995, it received an amount of USD 329,433 from the Government of Morocco by way of compensation for its losses suffered under its contracts with the Government of Iraq.

2. Analysis and valuation

214. Karim Bennani provided as evidence of its alleged losses copies of the contracts with the Government of Iraq and schedules setting out the dates of the performance of the work under the contracts.

215. Karim Bennani also provided a letter dated 19 December 1992 addressed to it from the Embassy of Iraq in Rabat in which the Embassy acknowledges a "credit balance" in favour of Karim Bennani in the amount of USD 1,238,321. The Panel considers this letter to be evidence of an acknowledgement of the debt owed by the Government of Iraq to Karim Bennani with respect to the work performed by Karim Bennani under its contracts with the Government of Iraq, and that the Government of Iraq deducted USD 100,000 from its account.

216. Of the total amount of USD 1,238,321 acknowledged by the Government of Iraq to be owing to Karim Bennani, the Panel finds that Karim Bennani provided insufficient evidence of its performance of the work with a value of USD 218,307. This work was allegedly performed on Project 304X, Project 158, the Gaiza Project and Kasr Sakr project. The balance of the work (with a value of USD 1,020,014) was performed on the Plaster Project.

217. According to the schedules provided, Karim Bennani performed work with a total value of USD 2,196,050 on the Plaster Project. The Government of Iraq deducted the amount of USD 1,176,036 from the total amount to account for advances received,the unfinished portion of the work and other deductions. The Panel finds that Karim Bennani provided sufficient evidence of its performance of the work on the Plaster Project.

218. According to the schedules of work performed on the Plaster Project, Karim Bennani performed work with a value of USD 1,350,505 prior to 22 June 1990. Karim Bennani did not provide any evidence that this work was performed after 2 May 1990. In the absence of any evidence to the contrary, the Panel finds that the work was performed prior to 2 May 1990. The balance of the work on the Plaster Project, with a value of USD 845,545, was performed after 22 June 1990.

219. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

220. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Karim Bennani had, in each case, a contract with Iraq.

221. The Panel finds that the contract losses alleged by Karim Bennani relate partly to work that was performed prior to 2 May 1990.

222. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

223. With respect to the balance of the work (with a value of USD 845,545), the Panel is satisfied that this work was performed after 2 May 1990 and is, therefore, within the jurisdiction of the Commission. In arriving at an appropriate recommendation for compensation, the Panel finds that amounts should be deducted (on a pro-rata basis) from the value of the work performed to take account of (a) the amount of compensation already paid to Karim Bennani by the Government of Morocco; (b) work on the projects that was not completed by Karim Bennani; and (c) amounts already paid to Karim Bennani by the Iraqi employer in settlement of the amounts owed, including an advance payment paid on 11 July 1990 in respect of the Plaster Project. This results in a figure of USD 96,690 for "contract penalties" and "benefit margin for unpaid contract", which the Panel recommends be compensated to Karim Bennani.

3. Recommendation

224. The Panel recommends compensation in the amount of USD 96,690 for contract losses.

B. Loss of profits

1. Facts and contentions

225. Karim Bennani seeks compensation in the amount of USD 1,515,000 for loss of profits, which it describes as "loss of sole client and benefit

margin for three years". Karim Bennani's claim is for loss of the Government of Iraq as its sole client.

226. In its original submission, Karim Bennani sought compensation for "loss of sole client" and included this claim under "other losses". The loss has been reclassified for the purposes of this report as loss of profits.

227. In its original submission, Karim Bennani's calculations were based on its outstanding debt with Iraq, which was acknowledged in correspondence from the Embassy of Iraq in Rabat. However, in its reply to the article 34 notification, Karim Bennani changed the basis of its calculation of its profit margin using instead the profit margin appearing in its financial statements for the years 1989 and 1990.

228. Karim Bennani alleges that the claim for the loss of the Government of Iraq as its sole client entailed a benefit loss for a period of three years. Karim Bennani calculated its claim for loss of profits by taking its actual costs on the Iraqi projects for 1990, multiplying these by the profit margin reported in its 1989 financial statements and comparing the resulting figure by actual sales. It multiplied the resulting figure of USD 505,000 by three years.

2. Analysis and valuation

229. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

230. In support of its claim, Karim Bennani provided its financial statements for the years ending 31 December 1988, 1989 and 1990 as well as proposals for new contracts with the Government of Iraq.

231. The Panel finds that Karim Bennani did not demonstrate that its alleged loss of profits was a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation as Karim Bennani failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

232. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

233. Karim Bennani seeks compensation in the amount of USD 66,000 for loss of tangible property. The claim is for the alleged devaluation of stock which was destined for the Gaiza Project, but was "never taken away by Iraq".

234. Karim Bennani states that "zellige and wood elements inlaid with chiselled copper ... were kept in stock in the workshop of [its related company] Eben S.A."

235. Karim Bennani provided no further explanations or evidence in support of its claim for loss of tangible property. It does not state how the claimed amount was calculated.

236. The Panel finds that Karim Bennani failed to provide sufficient evidence which demonstrated its title to or right to use the assets. The Panel further finds that Karim Bennani failed to explain how its alleged losses were a direct result of Iraq's invasion and occupation of Kuwait.

237. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

238. Karim Bennani seeks compensation in the amount of USD 331,403 for payment or relief to others. The claim is for the alleged costs of the workers' travel expenses in the amount of USD 131,403 and salaries paid to workers upon their return to Morocco ("contention with staff") in the amount of USD 200,000.

239. In its original submission, Karim Bennani sought compensation for travel expenses and included this claim under "business transaction or course of dealing". The loss has been reclassified for the purposes of this report as payment or relief to others.

(a) Travel expenses

240. Karim Bennani states it compensated its workers for the travel expenses they incurred whilst fleeing Iraq. The contracts entered into between Karim Bennani and the Government of Iraq stipulate that Iraq was due to pay the costs of the workers' travel back to Morocco. Accordingly, the Panel finds that the travel expenses are compensable in principle. However, Karim Bennani provided no explanation as to how the travel expenses were calculated and, in any event, no evidence that it actually paid those expenses.

241. The Panel recommends no compensation for travel expenses.

(b) "Contention with staff"

242. Karim Bennani states that, due to cash flow problems caused by Iraq's failure to pay the outstanding debts owed to it, it was unable to pay its workers' salaries. Several workers commenced legal proceedings against Karim Bennani for unpaid salary amounts and damages for unfair dismissal. Pursuant to court orders made by the Court of First Instance and the Court of Appeal of Rabat, Karim Bennani was required to pay USD 200,000 to several of its workers. Karim Bennani states that the legal proceedings are continuing.

243. Karim Bennani provided as evidence of its alleged losses extracts from the decisions of the Court of First Instance and the Court of Appeal of Rabat. Those extracts indicate that Karim Bennani was ordered to pay amounts to several of its workers for unpaid salary. The courts did not uphold the workers' claims for the other items, such as unfair dismissal, "unexpected dissolution" and "risks". The Panel was unable to reconcile the amounts included in the court awards with the amount of Karim Bennani's claim.

244. Karim Bennani also provided schedules of outstanding payments due to its employees. However, the Panel was unable to reconcile the amounts included in the schedules with the amount of Karim Bennani's claim. Further, Karim Bennani did not explain the relevance of these schedules to its claim.

245. In addition to these evidentiary deficiencies, the Panel finds that Karim Bennani failed to demonstrate how the salary payments in the amount of USD 200,000 exceed the salaries that it would have been liable to pay its workers in any event, had the invasion and occupation of Kuwait by Iraq not taken place. The Panel, therefore, finds that Karim Bennani failed to demonstrate that its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait, and recommends no compensation.

Recommendation

246. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

247. Karim Bennani seeks compensation in the amount of USD 260,000 for financial losses.

(a) Sale of group company

248. Karim Bennani seeks compensation in the amount of USD 210,000 for the "sale of Gamma-Design". Karim Bennani alleges that the damage caused to the group company, Gamma-Design, when its premises were burnt down by workers in January 1991, required the cessation of activity and sale of the company for the price of a symbolic dirham.

249. Karim Bennani submitted no evidence in support of the alleged damage to the Gamma-Design company.

(b) Loss of capital

250. Karim Bennani seeks compensation in the amount of USD 50,000 for loss of capital revenues (which it describes in the "E" claim form as "associate current accounts and capital revenues") for the three years preceding the claim. Karim Bennani provided no further details, and, consequently, both the factual background to, and the legal basis of, the claim are unclear.

251. The Panel finds that Karim Bennani provided insufficient explanations and evidence of its alleged loss.

Recommendation

252. The Panel recommends no compensation for financial losses.

F. Recommendation for Karim Bennani

Table 12. Recommended compensation for Karim Bennani

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	720,000	96,690
Loss of profits	1,515,000	nil
Loss of tangible property	66,000	nil
Payment or relief to others	331,403	nil
Financial losses	260,000	nil
Total	2,892,403	96,690

253. Based on its findings regarding Karim Bennani's claim, the Panel recommends compensation in the amount of USD 96,690. The Panel finds the date of loss to be 2 August 1990.

IX. PETROGAS, GAS-SYSTEMS B.V

254. Petrogas, Gas-Systems BV ("Petrogas") is a private limited liability company registered in the Netherlands. It is involved in the design and execution of projects for the petrochemical industry. Petrogas seeks compensation in the amount of KWD 359,003 (USD 1,242,225).

255. Petrogas claimed the total amount of its claim as contract losses. However, the amounts claimed for contract losses are more appropriately classified as: USD 256,336 for contract losses; USD 114,187 for loss of profits; USD 189,353 for payment or relief to others; USD 200,692 for other losses and USD 481,657 for interest.

Table 13. Petrogas' claim

Claim element	Claim amount (USD)
Contract losses	256,336
Loss of profits	114,187
Payment or relief to others	189,353
Other losses	200,692
Interest	481,657
Total	1,242,225

A. Contract losses

1. Facts and contentions

256. Petrogas seeks compensation in the amount of KWD 74,081 (USD 256,336) for contract losses allegedly incurred in connection with a contract entered into with the Ministry of Electricity and Water in Kuwait (the "Employer"), to supply and erect gas scrubbers and pressure reducing stations at Az-Zour Power Station and Az-Zour Gas Turbine Station.

257. The contract was signed on 30 June 1988. The period for completion of the works was 11 months for the Az-Zour Power Station and 15 months for the Az-Zour Gas Turbine Station. Completion of the works was scheduled for May 1989 and September 1989, respectively. Petrogas alleges that, at the time of Iraq's invasion of Kuwait, the contract was 70 per cent complete.

258. Petrogas further alleges that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to continue performance of its obligations under the contract. After the liberation of Kuwait, the Employer requested that Petrogas complete the performance of the contract at the original price. The Employer was allegedly unwilling to reimburse

Petrogas for the losses it suffered as a result of work stoppage, cancellation of materials, and interest lost.

259. On 10 May 1993, Petrogas and the Employer entered into a Settlement and Finalisation Deed (the "Settlement Deed"), which governed the method by which the parties to the contract would settle outstanding matters, including outstanding costs. The Settlement Deed was expressed to be "reached and declared by the contracting parties to settle all claims, demands for extra works and other contractual aspects and finalise" the contract.

260. Petrogas' claim is for storage costs and cancellation costs in respect of materials purchased for the contract, which allegedly could not be sent to Kuwait because of the trade embargo.

2. Analysis and valuation

261. The Panel finds that the terms of the Settlement Deed clearly demonstrate that a settlement agreement was entered into between Petrogas and the Employer. The Panel further finds that Petrogas failed to demonstrate that its claimed losses were not covered by the terms of the settlement.

3. Recommendation

262. The Panel recommends no compensation for contract losses.

B. Loss of profits

263. Petrogas seeks compensation in the amount of KWD 33,000 (USD 114,187) for loss of profits. Petrogas alleges that it was unable to complete the contract. It seeks compensation for loss of profits on the final stage of the contract and the additional costs incurred in negotiating the final contract price with the Employer.

264. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

265. In support of its claim, Petrogas provided a calculation of its loss, audited accounts for the period 1988 to 1993, accounts prepared for tax purposes, a profit assessment from the Kuwaiti tax authorities and original profit calculations used in preparation of its tender for the projects. The Panel finds that Petrogas failed to provide evidence that establishes that any loss of profit resulting from the early termination of the contract directly resulted from Iraq's invasion and occupation of Kuwait.

266. The Panel recommends no compensation for loss of profits.

C. Payment or relief to others

267. Petrogas seeks compensation in the amount of KWD 54,723 (USD 189,353) for payment or relief to others. The claim is for the alleged costs of unproductive idle time of its employees in Kuwait.

268. Petrogas states that, after Iraq's invasion and occupation of Kuwait, it was unable to contact the Employer and was unsure of the status of the contract. It was advised by its insurers not to cancel the contract. As a result, Petrogas did not reallocate its staff working on the project for several weeks.

269. As evidence of its alleged losses, Petrogas submitted payroll records for the month of December (presumably for 1990, however, the year cannot be determined from the documents) and computer print-outs of payments from the agency which provided Petrogas with temporary workers. Petrogas also submitted the names and identity numbers of the members of staff concerned.

270. The Panel finds that Petrogas failed to provide sufficient evidence of these payments and, therefore, how it suffered any loss.

271. The Panel recommends no compensation for payment or relief to others.

D. Other losses

272. Petrogas seeks compensation in the amount of KWD 58,000 (USD 200,692) for losses allegedly incurred in connection with legal fees, project co-ordinator expenses and travel and residence costs.

273. Petrogas states that it sought legal advice to pursue an insurance claim under its contract completion insurance policy. It also states that it retained a project co-ordinator at its head office until August 1991 in order to finalise the contract with the Employer. Petrogas' claim is for the time spent by the project co-ordinator on the project from October 1990 to August 1991. Petrogas also claims for travel and residence costs allegedly incurred during negotiations with the Employer to settle the contractual claims. Petrogas failed to provide information concerning the dates on which these costs were incurred.

274. Petrogas failed to submit any documentation to support its claim for other losses. The Panel recommends no compensation for other losses as Petrogas failed to provide sufficient evidence of the alleged losses.

275. The Panel recommends no compensation for other losses.

E. Interest

276. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

F. Recommendation for Petrogas

Table 14. Recommended compensation for Petrogas

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	256,336	nil
Loss of profits	114,187	nil
Payment or relief to others	189,353	nil
Other losses	200,692	nil
Interest	481,657	nil
Total	1,242,225	nil

277. Based on its findings regarding Petrogas' claim, the Panel recommends no compensation.

X. INSTITUTE HYDROPROJECT

278. Institute Hydroproject ("Hydroproject") is a public joint-stock company existing under the laws of the Russian Federation involved in the construction of dams. In its original submission Hydroproject sought compensation in the amount of USD 3,260,757 for contract losses and interest.

279. In its reply to the article 34 notification, Hydroproject made significant changes to its original claim by reducing its original claim for contract losses, including the substitution of some of its invoices, and increasing its claim for interest. The Panel has only considered those losses and invoices contained in the original claim except where such losses and invoices have been withdrawn or reduced by Hydroproject. Where Hydroproject reduced the amount of losses in its revised claim submission, the Panel has considered the reduced amount.

280. The Panel, therefore, has considered the reduced amount of USD 1,596,882.

Table 15. Hydroproject's claim

Claim element	Claim amount (USD)
Contract losses	821,745
Interest	775,137
Total	1,596,882

A. Contract losses

1. Facts and contentions

281. Hydroproject seeks compensation in the amount of USD 821,745 for contract losses allegedly incurred in connection with a design contract (the "Contract") for the Al-Baghdadi dam in Iraq. The Contract and its supplement were entered into between Hydroproject's legal predecessor and the Al Fao General Establishment of Iraq (the "Employer").

(a) The Contract

282. Under the Contract dated 7 July 1989, Hydroproject agreed to provide design related services for the Al-Baghdadi dam project (the "Project"). The total value of the Contract was USD 12,000,000. The parties contemplated that the Project would commence on 1 April 1990 and that the period of construction would be 48 months. The Contract came into force on 7 August 1989.

283. Under the terms of the contract, 97 per cent of the Contract price was to be invoiced quarterly. Hydroproject carried out work under the Contract both in Iraq and at its offices in Moscow. Work continued at both sites for a considerable period after Iraq's invasion and occupation of Kuwait. Hydroproject continued working in Moscow until 10 April 1991. Hydroproject stated that it carried out work after Iraq's invasion and occupation of Kuwait for which it rendered invoice no. 5A dated 9 October 1990.

284. Hydroproject seeks compensation in the amount of USD 554,625 in relation to this invoice, which allegedly has not been paid.

(b) Supplement No. 1

285. On 4 May 1990, the parties entered into Supplement No. 1 to the Contract pursuant to which Hydroproject agreed to provide design related services for fish-passing facilities at the Project, including the preparation of a design report. The total value of Supplement No. 1 was USD 1,400,000. Supplement No. 1 came into force on 4 June 1990.

286. Under Supplement No. 1, the Employer was required to pay USD 159,000 within three months of the effective date of Supplement No. 1 "without submission of the documentation by" Hydroproject. This payment was due on 4 September 1990. Hydroproject invoiced the Employer for this sum on 6 September 1990 (the "first invoice").

287. Under Supplement No. 1, Hydroproject was entitled to payment for its preparation of a draft report on fish-passing facilities "on submission of five copies of the draft" to the Employer. Hydroproject stated that it prepared the draft report and sent five copies to the Employer in February 1991. Hydroproject invoiced the Employer the amount of USD 265,000 on 26 February 1991 for its work (the "second invoice").

288. Hydroproject asserts that both the first invoice and the second invoice remain outstanding. It seeks compensation in the amount of USD 267,120 for 63 per cent of the amounts invoiced under Supplement No. 1.

2. Analysis and valuation

289. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

290. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Hydroproject had, in each case, a contract with Iraq.

291. As evidence of its claim for contract losses, Hydroproject provided copies of the contracts, invoices, copies of correspondence including an acknowledgement of receipt by the Employer of invoice no. 5A, consultants'

reports, statements of work performed and services rendered under the contracts, and the draft report for the fish-passing facilities.

(a) The Contract

292. The Panel finds that the contract losses alleged by Hydroproject relate entirely to work that was performed between July and September 1990, i.e., after 2 May 1990. The claim is, therefore, within the jurisdiction of the Commission.

293. The Panel finds that Hydroproject provided sufficient evidence that the work was performed and that it was entitled to be paid for the work. The Panel recommends compensation in the amount of USD 554,625 for contract losses incurred under the Contract.

(b) Supplement No. 1

294. In relation to the claim for the first invoice, the Panel finds that, under the terms of the Contract, Hydroproject became entitled to the amount included in the invoice on 4 September 1990, without the need to carry out any work. The Panel finds that, in the absence of any evidence to the contrary, the Employer's failure to pay the invoice was a direct result of Iraq's invasion and occupation of Kuwait.

295. In relation to the claim for second invoice, the Panel finds that Hydroproject provided sufficient evidence that it prepared the draft report and submitted it to the Employer in accordance with the terms of Supplement No. 1. Hydroproject, therefore, had a contractual entitlement to the amount invoiced.

296. The Panel recommends compensation in the amount of USD 100,170 in respect of the first invoice (USD 159,000 times 63 per cent equals USD 100,170) and USD 166,950 in respect of the second invoice (USD 265,000 times 63 per cent equals USD 166,950).

3. Recommendation

297. The Panel recommends compensation in the amount of USD 821,745 for contract losses.

B. Interest

298. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

C. Recommendation for Hydroproject

Table 16. Recommended compensation for Hydroproject

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	821,745	821,745
Interest	775,137	(--)
Total	1,596,882	821,745

299. Based on its findings regarding Hydroproject's claim, the Panel recommends compensation in the amount of USD 821,745. In relation to Hydroproject's claim for contract losses (the Contract), the Panel finds the date of loss to be 9 October 1990. In relation to Hydroproject's claim for contract losses (Supplement No. 1), the Panel finds the dates of loss to be 6 September 1990 for the first invoice and 26 February 1991 for the second invoice.

XI. SWEDPOWER AB

300. SwedPower AB ("SwedPower") is a limited liability, consulting engineering company existing under Swedish law. SwedPower seeks compensation in the amount of 2,578,500 Swedish krona (SEK) (USD 447,890) for contract losses.

Table 17. SwedPower's claim

Claim element	Claim amount (USD)
Contract losses	447,890
Total	447,890

A. Contract losses

1. Facts and contentions

301. SwedPower seeks compensation in the amount of SEK 2,578,500 (USD 447,890) for contract losses allegedly incurred in connection with a contract for the provision of consulting services on a distribution network in Iraq.

302. On 29 January 1986, SwedPower entered into a contract with the Directorate General of Electrical Distribution for Governates of the Republic of Iraq (the "Employer") for the provision of consulting services in relation to a new distribution network in Basra. Under the terms of the contract, SwedPower was to provide design and detailed drawings, tender documents, and a field survey.

303. The total contract price was SEK 7,125,000 and IQD 203,500. The contract allowed for work to be carried out over an eleven-month period with a further two-year maintenance period to commence after completion of the works. Assuming the contract ran to schedule, the maintenance period was due to commence on 29 August 1986 and to finish on 28 August 1988.

304. The contract provided for an advance payment of 10 per cent of the contract price, payable on signing of the contract. A further 85 per cent of the contract price was to be paid in six equal monthly instalments commencing at the start of the field survey work, on presentation of invoices. The final five per cent retention money was to be paid on submission of the final tender documents, along with a bank guarantee to the same value valid throughout the 24 month maintenance period. The amount of IQD 36,000 was to be paid in four equal instalments at six-month intervals during the maintenance period.

305. SwedPower alleges that it did not receive the fifth and sixth monthly payments (invoice nos. 5 and 6 dated 19 January 1988) and the five per cent retention amount payable in Swedish krona (invoice no. 7).

306. SwedPower issued its final invoice (invoice no. 7), for the five per cent retention amount payable in Swedish krona, on 30 June 1990. However, it did not submit this invoice to the Employer. SwedPower states that all work on the project was completed during 1989.

2. Analysis and valuation

307. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

308. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) SwedPower had a contract with Iraq.

309. The Panel finds that the alleged contract losses relating to invoice nos. 5 and 6 relate entirely to work that was performed prior to 2 May 1990. The Panel recommends no compensation for contract losses relating to invoice nos. 5 and 6, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

310. With respect to invoice no. 7, the Panel finds that SwedPower failed to provide any evidence demonstrating that the retention money fell due after 2 May 1990. The Panel recommends no compensation in respect of SwedPower's claim for unpaid retention monies, as it relates to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, is outside the jurisdiction of the Commission.

3. Recommendation

311. The Panel recommends no compensation for contract losses.

B. Recommendation for SwedPower

Table 18. Recommended compensation for SwedPower

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	447,890	nil
Total	447,890	nil

312. Based on its findings regarding SwedPower's claim, the Panel recommends no compensation.

XII. MŞM-ENDÜSTRI AŞ

313. MSM Endustri AS ("MSM") is a manufacturing company incorporated in Turkey. MSM seeks compensation in the amount of 70,399 Deutsche Mark (DEM) (USD 45,070) and USD 23,126 for financial losses.

Table 19. MSM's claim

Claim element	Claim amount (USD)
Financial losses	68,196
Total	68,196

A. Financial losses

1. Facts and contentions

314. MSM seeks compensation in the amount of DEM 70,399 (USD 45,070) and USD 23,126 for financial losses allegedly incurred in connection with a contract that it entered into on 15 May 1990 with the Republic of Iraq, General Establishment of Iraqi Ports (the "Employer").

315. Under the terms of the contract, MSM was to manufacture and deliver two container cranes and train the Employer's personnel in using them. The value of the respective components of the contract were (a) DEM 14,103,000 (manufacture and delivery) and (b) DEM 250,000 (training). The performance of the contract was to be completed within 19 months of the issue of a letter of credit and payment by the Employer of an advance payment.

316. MSM employed two sub-contractors for the performance of the contract, Vulkan Hafentechnik GmbH (previously Krupp) and AEG AG ("AEG"), both German companies.

317. MSM alleges that it provided the Employer with a performance bond in the amount of IQD 133,500 and that AEG provided a counter-guarantee in support of the performance bond. MSM further alleges that AEG paid the Employer's stamp duties totalling DEM 25,311, for which it invoiced MSM.

318. MSM states that on 27 June 1990, the Employer sent a telex indicating that "the necessary steps were being taken to open the letter of credit". However, MSM alleges that the letter of credit was not opened, with the result that the contract was rendered "void".

319. MSM's claim is for costs in the amount of DEM 27,506 which it allegedly incurred in relation to the performance bond, stamp duty charges in the amount of DEM 25,311 relating to the supply, delivery and erection of the cranes, interest charges in the amount of DEM 17,582 relating to the cost of the performance bond and stamp duty charges, and personnel and

general administration costs in the amount of USD 23,126 relating to the four months of manpower allegedly required for the project.

2. Analysis and valuation

320. As evidence of its alleged losses in respect of the performance bond, MSM provided a copy of an invoice dated 1 June 1990 from AEG in the amount of DEM 27,506. It also provided an invoice from AEG for the interest expenses, dating from 1 July 1990 to 31 May 1993, indicating that the performance bond charges were not paid prior to 31 May 1993.

321. In relation to MSM's claim for stamp duty charges, it failed to provide proof of payment in relation to charges.

322. In relation to MSM's claim for bank and other expenses, it provided an invoice dated 2 June 1993 from AEG. The invoice indicates that these expenses relate to interest on the invoices issued by AEG for stamp duty and to the performance bond. MSM failed to provide proof of payment of these expenses.

323. In relation to the claim for personnel and general administrative costs, MSM failed to provide copies of payroll records or proof of payment of these expenses.

324. The Panel finds that MSM did not submit sufficient evidence to support its claim for alleged financial losses.

3. Recommendation

325. The Panel recommends no compensation for financial losses.

B. Recommendation for MSM

Table 20. Recommended compensation for MSM

Claim element	Claim amount (USD)	Recommended compensation (USD)
Financial losses	68,196	nil
Total	68,196	nil

326. Based on its findings regarding MSM's claim, the Panel recommends no compensation.

XIII. SEZAI TÜRKEŞ FEYZI AKKAYA CONSTRUCTION COMPANY

327. Sezai Türkes Feyzi Akkaya Construction Company ("STFA") is a construction company existing under Turkish law. STFA seeks compensation in the amount of USD 506,171 for other losses.

Table 21. STFA's claim

Claim element	Claim amount (USD)
Other losses	506,171
Total	506,171

A. Other losses

1. Facts and contentions

328. STFA alleges that, at the time of Iraq's invasion and occupation of Kuwait, it was in the process of contract document preparation and negotiations for the SS-8 Basra Region GIS Transformer Centre project, a turnkey project for the construction of a series of transformer buildings in Basra City and Amara City in Iraq (the "Project"). STFA appears to have led a consortium with two other companies, STFA ELTA Elektrik Tesisleri (a related company incorporated in Turkey) and Asea Brown Boveri AG, a German corporation.

329. In 1989 and 1990, STFA submitted tenders for a series of projects, including the Project, to the Iraqi authorities. STFA received a letter of intent for the Project dated 10 April 1989 from the Ministry of Industry and Military Manufacturing Executive Committee for Major Electrical Projects of Iraq (the "Ministry"). The letter of intent stated that the total price of the proposed contract was IQD 104,400,000. STFA alleges that Iraq's invasion and occupation of Kuwait prevented the parties from executing the proposed contract and stopped the Project's progress.

330. STFA seeks recovery of costs, which it alleges were primarily incurred by its Baghdad office in 1989 and 1990 in attempting to secure the Project. STFA claims costs in the amounts of USD 236,435 for "office and agent personnel expenses - 1989", USD 164,128 for "office and agent personnel expenses - 1990", USD 85,608 for "tender preparation and submission" and USD 20,000 for head office expenses.

2. Analysis and valuation

331. STFA's claim is very similar in nature to a claim for loss of profits. The Panel has accordingly approached the claim as if it were a claim for loss of profits. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

332. In support of its claim, STFA provided copies of correspondence between STFA and the Ministry (including the letter of intent) evidencing the contractual negotiations that took place with respect to the Project, and numerous original receipts, invoices and payment advice slips relating to the operation of the Baghdad office and preparation of the tender documents.

333. The Panel has considered the terms of the letter of intent issued by the Ministry. The letter of intent was issued "without any obligation from [the Ministry's] side" and was subject to each party's approval. Before the Project could begin, it appears that the Ministry was to issue a letter of award. The Panel finds that the issue of the letter of intent did not confer any rights or obligations upon either the Ministry or STFA. The Panel notes that no contract resulted from these negotiations, despite the fact that a period of almost 16 months elapsed between the date of the letter of intent and the date of Iraq's invasion and occupation of Kuwait.

334. STFA was requested in the article 34 notification to submit evidence to substantiate its assertion that the losses on the Project were directly caused by Iraq's invasion and occupation of Kuwait. STFA failed to provide the requested information. The Panel finds that STFA failed to establish any link between its costs or the failure to execute the proposed contract, and Iraq's invasion and occupation of Kuwait.

335. The Panel recommends no compensation for other losses as STFA failed to demonstrate that its claim for other losses was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

336. The Panel recommends no compensation for other losses.

B. Recommendation for STFA

Table 22. Recommended compensation for STFA

Claim element	Claim amount (USD)	Recommended compensation (USD)
Other losses	506,171	nil
Total	506,171	nil

337. Based on its findings regarding STFA's claim, the Panel recommends no compensation.

XIV. ALFRED MCALPINE SERVICES AND PIPELINES LTD.

338. Alfred McAlpine Services and Pipelines Ltd. ("McAlpine") is a public limited liability company incorporated in the United Kingdom, which is involved in the construction and petroleum industries. McAlpine claims compensation on behalf of itself and a wholly owned subsidiary, PMCS Ltd. ("PMCS").

339. In the "E" claim form, McAlpine sought compensation in the amount of 626,967 Pounds sterling (GBP) (USD 1,191,952) for contract losses, loss of tangible property, payment or relief to others, head office overheads and financing costs.

340. In its reply to the article 34 notification, McAlpine increased the amounts claimed for the elements of payment or relief to others and financing costs. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by McAlpine. Where McAlpine reduced the amount of losses in its reply to the article 34 notification, the Panel has considered the reduced amount.

341. The Panel reclassified some elements of McAlpine's losses for the purposes of this report. The Panel therefore considered the amount of GBP 626,967 (USD 1,191,952) for contract losses, loss of profits, tangible property losses, payment or relief to others, financial losses and interest.

Table 23. McAlpine's claim

Claim element	Claim amount (USD)
Contract losses	375,044
Loss of profits	73,328
Loss of tangible property	259,261
Payment or relief to others	44,360
Financial losses	17,110
Interest	422,849
Total	1,191,952

A. Contract losses

1. Facts and contentions

342. McAlpine seeks compensation in the amount of GBP 197,273 (USD 375,044) for contract losses allegedly incurred in connection with two construction contracts with the State Establishment for Pipelines, Iraq (the "Employer"), in Iraq. The first contract was for the construction of a

number of pipeline crossings of the River Tigris and one pipeline crossing of the Basra Canal ("Project A"). The second contract was for the design and supply of a gas metering station ("Project B").

(a) Project A

343. In relation to the contract for Project A, McAlpine claims on behalf of PMCS, which was the party to the contract with the Employer dated 8 July 1989. Under the contract, PMCS was to receive the amounts of GBP 1,360,000 and IQD 290,000 from the Employer for these construction works. PMCS was required to construct the pipeline crossings of the River Tigris in two locations. First, PMCS was to build three crossings in the area of Daura Baghdad. The construction period was anticipated to be between September and November 1989. PMCS was then required to build two crossings of the River Tigris in an area approximately 20 kilometres north of Baghdad. The construction period was anticipated to be between November 1989 and January 1990. Finally, PMCS was required to build one crossing of the Basra Canal. The construction period was anticipated to be between December 1989 and February 1990, with demobilisation of Project A to take place at the beginning of March 1990. McAlpine stated that work commenced in July 1989 and "was completed in February/March 1990".

344. McAlpine seeks compensation for unpaid retention monies in the amount of GBP 68,000 and IQD 14,500. McAlpine stated that the retention monies were due to be paid by the Employer by April 1990 and that they remained outstanding at the time of Iraq's invasion and occupation of Kuwait.

(b) Project B

345. Under a purchase order issued by the Employer dated 24 January 1989, McAlpine was to receive the amount of GBP 668,490 for the design and supply of a gas metering station in Iraq. McAlpine stated that the first stage of the work under the purchase order, namely the design work, had been completed. McAlpine did not state when it completed the work. However, McAlpine provided a copy of an invoice for the design work dated 4 September 1989. McAlpine stated that the design document had to be approved by the Employer. McAlpine submitted documents containing conflicting information regarding the date when it obtained the Employer's approval for the design work. In its Statement of Claim it stated that the design work was approved in mid 1990. In a revised claim submission, McAlpine alleged that the design work was approved in April 1990. There is no reference in the purchase order to the alleged requirement for the Employer's approval.

346. McAlpine seeks compensation in the amount of GBP 100,273 for the design work invoiced on 4 September 1989. It does not seek compensation for any other performance under the purchase order.

2. Analysis and valuation

347. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

348. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), PMCS and McAlpine had, in each case, a contract with Iraq.

349. The Panel finds in relation to Project A that PMCS completed the work under the contract in February/March 1990. The contract losses alleged by McAlpine therefore relate entirely to work that was performed prior to 2 May 1990.

350. The Panel finds in relation to Project B that the work invoiced under the purchase order was completed in September 1989 and was not contingent on the Employer's approval. The contract losses alleged by McAlpine therefore relate entirely to work that was performed prior to 2 May 1990.

351. The Panel recommends no compensation for contract losses as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

352. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

353. McAlpine seeks compensation in the amount of GBP 38,570 (USD 73,328) for "head office costs". McAlpine originally classified this element of loss as "other losses/ head office costs", but it is more appropriately classified as loss of profits. McAlpine asserted that this figure represented operating costs. The figure was stated to be based on an average of percentages of operating costs for the years 1989, 1990 and 1991 multiplied by the amount of the other loss elements of the claim.

2. Analysis and valuation

354. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

355. McAlpine provided no evidence to support its claims in relation to loss of profits. McAlpine did not submit evidence such as audited financial statements, budgets, management accounts, turnover or profit/loss statements prepared by or on behalf of McAlpine or PMCS.

356. The Panel finds that McAlpine failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

357. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

358. McAlpine seeks compensation in the amount of GBP 136,371 (USD 259,261) for loss of tangible property. The claim is for the alleged loss of PMCS' plant, equipment and spares from its Project A sites in Iraq. McAlpine stated that the property was retained in Iraq after completion of Project A in February/March 1990 as part of its proposed ongoing business. The tangible property comprising McAlpine's claim includes stock items (including vehicles), light plant items, a photocopier and office and villa stocks.

359. McAlpine stated that following Iraq's invasion and occupation of Kuwait, it was not possible to protect, remove or relocate the property because of the detention of its supervising employee in Iraq and the inability of its other employees to return to Iraq. McAlpine believes that representatives of Iraq took the property and it asserts that it has not retrieved any of the property or its value.

2. Analysis and valuation

360. McAlpine provided as evidence of its title to the property purchase invoices in relation to some, but not all, of the items, and an internally generated computer inventory (dated 1991) in relation to all light plant items.

361. As evidence of the presence of the items in Iraq at the time of its invasion and occupation of Kuwait, McAlpine provided a detailed truck consignment note dated 19 August 1989 for the vehicles which comprise part of the stock items. The note recorded that delivery of the vehicles to Iraq had taken place. McAlpine provided no evidence that any of the other items of property were in Iraq at the time of the invasion and occupation of Kuwait.

362. The Panel finds that McAlpine provided sufficient evidence of its title to or right to use, and the value and the presence in Iraq of, the vehicles. The Panel requested its expert consulants to perform a valuation of the losses. The Panel's expert consultants applied depreciation rates appropriate for such vehicles and concluded that the vehicles had a value of KWD 23,896 as at 2 August 1990 (although McAlpine's claim is for an amount in Pounds sterling, it purchased the vehicles in Kuwait for Kuwaiti

dinars). The Panel recommends compensation in the amount of KWD 23,896 (USD 82,684) for the vehicles.

363. In respect of the other items included in the claim for loss of tangible property, although McAlpine provided evidence of its title to some of the items, the Panel finds McAlpine failed to submit sufficient evidence of the presence of those items of property in Iraq prior to 2 August 1990.

3. Recommendation

364. The Panel recommends compensation in the amount of USD 82,684 for loss of tangible property.

D. Payment or relief to others

365. McAlpine seeks compensation in the amount of GBP 23,333 (USD 44,360) for payment or relief to others. The claim is for alleged salary payments made to an employee of PMCS during his detention by the Iraqi authorities. McAlpine stated that the employee was in Iraq at the date of its invasion and occupation of Kuwait. Following Iraq's invasion, he was detained in Iraq until January 1991, when he was allowed to return to the United Kingdom. He did not work during this period. McAlpine stated that during the period in question, it paid the employee's salary.

366. McAlpine provided as evidence of its alleged losses a copy of the employee's contract of employment and one internal letter authorising payment of the salary for August 1990 to the employee's wife. McAlpine did not submit any evidence of payment of that month's salary or of any other salary payments.

367. The Panel finds that McAlpine failed to submit sufficient evidence that it paid the employee during the period asserted in its claim.

368. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

369. McAlpine seeks compensation in the amount of GBP 9,000 (USD 17,110) for loss of the amount of IQD 4,500 allegedly held in PMCS' bank account in Baghdad. McAlpine originally classified this element of loss as "other tangible property losses", but it is more appropriately classified as financial losses. McAlpine asserted that following Iraq's invasion and occupation of Kuwait, it was not possible to protect, remove or relocate the monies because of the detention of its supervising employee in Iraq and the inability of its other employees to return to Iraq. McAlpine believes the monies were taken by representatives of Iraq and it stated that it has not retrieved the monies or their value.

370. McAlpine states that the claimed amount is an estimate. It states that it has no further records. The Panel finds that McAlpine failed to

submit sufficient evidence to prove the existence or ownership of the bank account or that the funds in the account have been appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

371. The Panel recommends no compensation for financial losses.

F. Interest

372. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

G. Recommendation for McAlpine

Table 24. Recommended compensation for McAlpine

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	375,044	nil
Loss of profits	73,328	nil
Loss of tangible property	259,261	82,684
Payment or relief to others	44,360	nil
Financial losses	17,110	nil
Interest	422,849	(--)
Total	1,191,952	82,684

373. Based on its findings regarding McAlpine's claim, the Panel recommends compensation in the amount of USD 82,684. The Panel finds the date of loss to be 2 August 1990.

XV. MIVAN OVERSEAS LIMITED

374. Mivan Overseas Limited ("Mivan") is a construction company incorporated in the United Kingdom.

375. Mivan sought compensation in the amount of GBP 2,877,770 (USD 5,471,045) for contract losses, business transaction or course of dealing, loss of tangible property and claim preparation costs.

376. The Panel has reclassified elements of Mivan's claim for the purposes of this report. The Panel therefore considered the amount of GBP 2,877,770 (USD 5,471,045) for contract losses, loss of profits, loss of tangible property, financial losses, interest and claim preparation costs.

Table 25. Mivan's claim

Claim element	Claim amount (USD)
Contract losses	103,369
Loss of profits	4,860,898
Loss of tangible property	39,572
Financial losses	458,732
Interest (no amount specified)	(--)
Claim preparation costs	8,474
Total	5,471,045

A. Contract losses

1. Facts and contentions

377. Mivan seeks compensation in the amount of GBP 54,372 (USD 103,369) for contract losses. At the time of Iraq's invasion and occupation of Kuwait, a joint venture formed by Mivan and Rotary (International) Limited ("Rotary"), a company incorporated in the United Kingdom, was engaged as a sub-contractor on the the Al Sijood Palace Project in Iraq ("Project 304X"). The contractor on Project 304X was the Special Projects Implementation Authority ("SPIA"), an agency of the Ministry of Housing and Reconstruction of Iraq. The sub-contract was dated 29 June 1987.

378. On 23 November 1987, Mivan and Rotary entered into an agreement setting out the terms of the joint venture (the "joint venture agreement").

379. A summary of the relevant provisions of the sub-contract and the joint venture agreement is contained in the section of this report dealing with the separate claim filed by Rotary for the alleged losses of the joint venture on Project 304X. (See paragraphs 514 to 521, infra).

380. The total commissions due to Mivan under the joint venture agreement, calculated at the rate of three per cent of the total contract price of the sub-contract, were GBP 352,404 and IQD 15,000 (converted by Mivan to GBP 27,273). Mivan states that it received the amounts of GBP 281,797 and IQD 7,429 (converted by Mivan to GBP 13,508), resulting in a shortfall of GBP 84,372.

381. In March 1993, Mivan received the amount of GBP 30,000 from Rotary in settlement of the outstanding commissions. It seeks compensation for the shortfall of GBP 54,372 for amounts allegedly unpaid by Rotary.

2. Analysis and valuation

382. As evidence of its claim for contract losses, Mivan provided copies of correspondence confirming the commissions paid by Rotary. With the exception of a witness statement signed by the project manager for the joint venture on Project 304X, it did not provide evidence that the works carried out by Rotary had been satisfactorily completed as at December 1990.

383. In its claim submission, Rotary included a letter dated 24 February 1993 from Mivan to Rotary. The letter states:

> "... [W]e are pleased to confirm our acceptance of your offer of GBP 30,000 in full and final settlement of any further commission due to us under this joint venture agreement."

384. Enclosed with the letter is an invoice from Mivan addressed to Rotary for the amount of GBP 30,000 "in full and final settlement of all outstanding commissions in respect of [Project 304X, Baghdad]."

385. The Panel finds that the terms of the letter from Mivan to Rotary and the enclosed invoice clearly demonstrate that a settlement agreement was entered into between the joint venture partners pursuant to which Mivan relinquished its right to receive further commissions under the joint venture agreement. Rotary, in its claim before the Commission, seeks compensation for the entire amount of the contract losses allegedly incurred by the joint venture. The Panel finds that, under the terms of the letter dated 24 February 1993, Rotary is the appropriate claimant before the Commission and Mivan has no entitlement to claim for contract losses.

3. Recommendation

386. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

387. Mivan seeks compensation in the amount of GBP 2,556,833 (USD 4,860,898) for loss of profits. The claim is for the alleged loss of profits on future contracts in Iraq. Mivan states that, following Iraq's invasion and occupation of Kuwait, all its negotiations in Iraq to secure new business ceased and it was not possible to pursue any other business activities in Iraq, with the exception of Project 304X.

388. Mivan states that on 12 July 1990, shortly before Iraq's invasion and occupation of Kuwait, it had been awarded a contract by the Foreign and Commonwealth Office of the United Kingdom for the first phase refurbishment of the British Embassy compound in Baghdad. The contract was suspended by mutual consent on 23 August 1990. Mivan states that it had also expected to win further phases of the refurbishment, which were due to be awarded later in 1990.

389. In addition, Mivan was in an advanced stage of negotiations for several other contracts in Iraq, including the construction of two nuclear air raid shelters, a housing development and a dairy project.

390. Mivan calculated its claim for loss of profits by taking a margin of 13 per cent (the average net profit margin achieved between 1986 and 1990), and applying this to an assumed annual turnover of GBP 6,555,981 over a period of three years. The turnover of GBP 6,555,981 is that shown in the financial statements for the year ending 31 December 1989, being the last year of uninterrupted business.

2. Analysis and valuation

391. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

392. In support of its claim, Mivan provided a statement from the joint venture's project manager describing the various business negotiations and proposals in which he was personally involved on behalf of Mivan in Iraq at the time of Iraq's invasion and occupation of Kuwait.

393. Mivan also provided a statement from its auditors, and extracts from its financial statements for the years 1986 to 1990 in respect of its business activities in Iraq, and a copy of its financial statements for the year ending 31 December 1992.

394. Mivan also provided a copy of a letter dated 12 July 1990 from the Foreign and Commonwealth Office of the United Kingdom, accepting Mivan's tender for refurbishment works on the British Embassy compound in Baghdad. Further correspondence provided by Mivan confirms that the works were suspended on 23 August 1990.

395. In respect of the British Embassy compound project, Mivan provided no costings or projections supporting its tender, which would show the profitability of the project. The Panel finds that Mivan provided insufficient evidence to substantiate its alleged loss.

396. In respect of the other possible business opportunities in Iraq, Mivan states that all tender documents and related information, such as cashflow projections and construction time schedules, and all documents relating to negotiations ongoing at 2 August 1990, were kept at its office in Baghdad and were lost following its departure from Iraq in December 1990. It also acknowledged that it is not possible to calculate the exact timing, turnover, or profitability of each of the anticipated projects. The Panel finds that Mivan provided insufficient evidence to substantiate its alleged loss.

397. The Panel recommends no compensation as Mivan failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

398. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

399. Mivan seeks compensation in the amount of GBP 20,815 (USD 39,572) for loss of tangible property (vehicles and other items of equipment). The assets were allegedly stolen after looting occurred at Mivan's branch office in Baghdad, and at a plant yard, stores and a camp used to house Thai workers located outside Baghdad.

400. In its original claim submission, Mivan sought compensation in the amount of GBP 262,108 for loss of tangible property. However, a review of the supporting documentation revealed that the amount of GBP 241,293 related to cash held in an Iraqi bank. This loss has, therefore, been reclassified for the purposes of this report as a financial loss. The balance of GBP 20,815 is dealt with under this section.

401. Mivan provided a witness statement signed by the project manager for the joint venture. The statement contains an account of the looting and destruction of the camp used to house the Thai workers. It states that, when the looting first began, Mivan moved equipment and plant from the camp to its plant yard and stores to try and safeguard the property. However, by the time of the project manager's departure from Iraq on 17 December 1990, this equipment and plant had been looted or destroyed.

402. A secretary who had been employed by Mivan (an Iraqi national), allegedly told the project manager after his return to the United Kingdom that Mivan's Baghdad office had been looted and no assets remained there.

2. Analysis and valuation

403. In addition to the witness statement referred to above, Mivan provided as evidence of its alleged losses extracts of its audited accounts for the year ending 31 December 1990 showing the fixed assets balances entered in those accounts. However, those extracts do not show evidence of title and the presence of the property in Iraq at the time of Iraq's invasion and occupation of Kuwait.

404. In the article 34 notification, Mivan was asked to provide evidence of ownership of each of the items of tangible property, such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers and other relevant documents generated prior to 2 August 1990.

405. In its reply, Mivan asserted that all documents concerning its property in Iraq were kept at its Baghdad office and were "stolen or destroyed following the departure of the last of [Mivan's] expatriate personnel in December 1990".

406. The extract from the accounts indicates that the majority of the assets had been written off and therefore had no commercial value. The items included in the extract of the accounts have very vague descriptions and it is not possible to identify from the accounts which items of property were in which location.

407. The Panel finds that Mivan failed to provide sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Iraq.

3. Recommendation

408. The Panel recommends no compensation for loss of tangible property.

D. Financial losses

1. Facts and contentions

409. Mivan seeks compensation in the amount GBP 241,293 (USD 458,732) for financial losses. The claim is for Iraqi dinar amounts with a value of GBP 131,678 held in two bank accounts with the Rafidain Bank and for cash held at its Baghdad office with a value of GBP 109,615. Mivan states that it was unable to obtain access to its funds in the bank accounts, and that the cash was looted from its office.

410. The claim for cash held in the bank accounts was originally classified as a loss of tangible property, but is more appropriately classified as a financial loss.

2. Analysis and valuation

411. Mivan provided as evidence of its alleged losses a letter from its auditors, Coopers and Lybrand, dated 23 September 1993, confirming the cash and bank balances entered in Mivan accounting records. It also provided a copy of its letter dated 1 December 1999 to Rafidain Bank seeking confirmation of its balance. Mivan states that it received no reply to its enquiry.

412. Mivan states that all bank statements and documents relating to its bank accounts were left in Iraq following the departure of its staff in December 1990.

413. The Panel finds that Mivan failed to prove that the funds in the accounts and the cash held at its project office had been appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

3. Recommendation

414. The Panel recommends no compensation for financial losses.

E. Interest

415. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

F. Claim preparation costs

416. Mivan seeks compensation in the amount of GBP 4,457 (USD 8,474) for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Mivan for such costs.

G. Recommendation for Mivan

Table 26. Recommended compensation for Mivan

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	103,369	nil
Loss of profits	4,860,898	nil
Loss of tangible property	39,572	nil
Financial losses	458,732	nil
Interest (no amount specified)	(--)	(--)
Claim preparation costs	8,474	(--)
Total	5,471,045	nil

417. Based on its findings regarding Mivan's claim, the Panel recommends no compensation.

XVI. MIVAN OVERSEAS LIMITED AND INTERIORS INTERNATIONAL LIMITED

418. Mivan Overseas Limited is a company registered in the United Kingdom involved in the construction industry. Interiors International Limited is a company registered in the United Kingdom involved in the provision of furniture and floor coverings. The companies formed a consortium called the MIE Consortium (the "MIE Consortium") pursuant to a consortium agreement dated 4 March 1988. The MIE Consortium sought in its original submission compensation in the amount of GBP 3,309,950 for contract losses, payment or relief to others and other costs.

419. The Panel has reclassified elements of the MIE Consortium's claim and notes that in its Statement of Claim, the MIE Consortium seeks compensation in the amount of GBP 3,306,058 (USD 6,285,281). The Panel also notes that the MIE Consortium made an arithmetic error in the calculation of its reclassified claim for loss of profits. The nature of the error is described in paragraph 440, infra. The Panel has accordingly corrected the error and has considered the figure of GBP 3,306,857 (USD 6,286,800) for contract losses, financial losses, loss of profits, payment or relief to others, other losses, interest and claim preparation costs.

Table 27. The MIE Consortium's claim

Claim element	Claim amount (USD)
Contract losses	2,633,201
Financial losses	150,225
Loss of profits	1,552,707
Payment or relief to others	1,174,894
Other losses	753,020
Interest (no amount specified)	(--)
Claim preparation costs	22,753
Total	6,286,800

A. Contract losses

1. Facts and contentions

420. The MIE Consortium seeks compensation in the amount of GBP 347,227 (USD 660,127) and IQD 519,958 (USD 1,973,074) for contract losses allegedly incurred in connection with a sub-contract for the internal finishing work and external marble work comprising part of the redevelopment of the Al Sijood Palace Project in Iraq ("Project 304X").

421. The Special Projects Implementation Authority of Iraq ("SPIA") awarded the works to the MIE Consortium under a Sub-Contract dated 16 March 1988

(the "Sub-Contract"). The employer on Project 304X was the Ministry of Housing and Construction of Iraq. The agreed period of the Sub-Contract was 20 months, commencing on 16 March 1988 and concluding on 16 November 1989. The value of the works was GBP 14,154,021 and IQD 1,073,881.

422. The Sub-Contract provided for a retention fund for both the Pound sterling and Iraqi dinar elements. The payment terms relevant to the MIE Consortium's claim required SPIA to pay the MIE Consortium 2.5 per cent of the Sub-Contract price on the issue of the Provisional Acceptance Certificate (the "PAC") and 2.5 per cent on the issue of the Final Acceptance Certificate (the "FAC") 12 months later, at the conclusion of the maintenance period. The Sub-Contract also required SPIA to pay a maximum of 10 per cent of the Sub-Contract price upon receipt of monthly certificates from the MIE Consortium evidencing installation of various components of the works.

423. In November 1988, during the MIE Consortium's performance of the Sub-Contract, Al Rashid Contracting Company ("Al Rashid") replaced SPIA as the main contractor on Project 304X. The MIE Consortium asserted that, henceforth, considerable delays in the progress of the works and a significant extension to the scope of the Palace were encountered. The extension to the works was formally recorded in variation orders which resulted in a small increase in the Sub-Contract price. The MIE Consortium sought consequential extensions to the duration of the Sub-Contract and these were agreed in practice, although not formally.

424. As a result of the employer's delay in agreeing to the extensions to the Sub-Contract, the MIE Consortium's work was incomplete at the time of Iraq's invasion of Kuwait. Consequently, the Consortium's personnel were present and working on site on 2 August 1990. The MIE Consortium asserts that it had substantially completed the works under the Sub-Contract by 23 August 1990. It carried out further work from August to December 1990 for which it issued five monthly certificates.

425. At the time that the last employee of the MIE Consortium left Iraq on 17 December 1990, Al Rashid had neither issued the PAC nor approved the five monthly certificates. The MIE Consortium prepared the final account for its works under the Sub-Contract as of 14 January 1991 and submitted it to Al Rashid. In the interim, the Palace was the subject of an air attack, which caused extensive damage. In May 1991 the MIE Consortium received the approved PAC dated 14 December 1990 and also the five monthly certificates, which Al Rashid had approved. It presented the PAC to the Bank of Ireland, which paid the Pound sterling elements due pursuant to a letter of credit.

426. The MIE Consortium states that, following the bombing of the Palace, it was unable to discharge its obligations under the maintenance and defects provisions of the Sub-Contract. It asserts that Al Rashid held the MIE Consortium responsible for repairing the damage done to the Palace following the bombing and, as such, refused to issue the FAC and

consequently to make any further retention payments or the Iraqi dinar payments which it was obliged to make for the monthly certificates. The MIE Consortium alleges that the FAC should have been issued on 13 December 1991 at the conclusion of the maintenance period. It claims that it is owed the Pound sterling element of the retention fund payable upon the issue of the FAC in the amount of GBP 347,227, the entire Iraqi dinar element of the retention fund in the amount of IQD 53,694 and the total of the amounts included in the monthly certificates, IQD 466,264.

2. Analysis and valuation

427. The MIE Consortium provided a significant amount of documentation in support of its claim, including copies of all relevant agreements, monthly certificates, its final account and correspondence between itself and the contractor.

428. With reference to the retention money, this Panel has held that retention money is a form of security held by an employer to ensure fulfilment by a contractor of its obligations to complete the project and to remedy defects after take over of the completed project by the employer.

429. The Panel has previously recommended compensation for loss of retention money where the project was ongoing on 2 August 1990, the claimant was prevented from terminating the project without fault, has submitted sufficient evidence of the amounts retained and has proven that all interim certificates were paid on a timely basis by the employer.

430. The Panel finds that Project 304X was effectively completed by 23 August 1990. However, the MIE Consortium carried out further work between August and December 1990 at the request of Al Rashid. One half of the retention money became due upon the issue of the PAC, which took place on 14 December 1990. The other half of the retention money became due upon the issue of the FAC. This event never occurred. The Panel finds that, in the absence of any evidence to the contrary, the employer's failure to issue the FAC, the consequential non-payment of the retention money due upon the issue of the FAC, the non-payment of the Iraqi dinar element of the retention money due upon the issue of the PAC and the non-payment of the five monthly certificates were a direct result of Iraq's invasion and occupation of Kuwait.

431. The Panel therefore recommends compensation in the amount of GBP 347,227 (USD 649,022) and IQD 53,694 (USD 172,650) for retention monies outstanding under the Sub-Contract and IQD 466,264 (USD 1,499,241) for unpaid monthly certificates.

3. Recommendation

432. The Panel recommends compensation in the amount of USD 2,320,913 for contract losses.

B. Financial losses

1. Facts and contentions

433. The MIE Consortium seeks compensation in the amount of GBP 79,018 (USD 150,225) for financial losses. The alleged losses are quarterly bank charges in respect of two bank guarantees (a performance guarantee and an advance payment guarantee) provided pursuant to the Sub-Contract for the period from 17 November 1989 until 13 December 1992. The performance guarantee was expressed to be valid until the issue of the FAC. The advance payment guarantee was expressed to be valid until approval by the employer of the final monthly certificate. The MIE Consortium states that the banks continued to impose charges in respect of these guarantees because the necessary certification under the Sub-Contract was not issued and a release from the Rafidain Bank could not be secured. The MIE Consortium seeks the costs of the charges for the period 17 November 1989 until 31 July 1990 in the amount of GBP 48,199 and for the period 24 August 1990 until 13 December 1992 in the amount of GBP 30,819.

434. The MIE Consortium originally classified the claim for bank charges as "contract losses", but they are more appropriately classified as financial losses.

2. Analysis and valuation

435. As evidence of its claim for bank charges, the MIE Consortium provided copies of the guarantees, correspondence from the banks which imposed the charges confirming the amount of the charges and the date they ceased, correspondence regarding the extension of the guarantees, and debit advice slips.

436. In relation to the claim for bank charges between 17 November 1989 and 31 July 1990, the Panel finds that the delays leading to the additional charges were caused by changes to the Palace's scope on the instructions of Saddam Hussein. The Panel finds that the MIE Consortium failed to demonstrate how these losses are a direct result of Iraq's invasion and occupation of Kuwait.

437. In relation to the claim for bank charges between 24 August 1990 and 13 December 1992 for the performance guarantee, the Panel finds that a proportion of the additional charges resulted from Al Rashid's failure to issue the FAC, which was a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the effective date of the FAC was 13 December 1991. Because charges were invoiced quarterly and the quarter immediately following the issue of the FAC commenced on 23 December 1991, the Panel finds that the charges between 23 December 1991 and 13 December 1992 are compensable in the sum of GBP 6,571 (USD 12,469).

438. In relation to the claim for bank charges between 24 August 1990 and 13 December 1992 for the advance payment guarantee, the Panel finds that the final monthly certificate approved in December 1990 effectively terminated this guarantee. The charges were invoiced quarterly. The Panel finds that the charges between December 1990 and 13 December 1992 are compensable in the sum of GBP 10,084 (USD 18,849).

3. Recommendation

439. The Panel recommends compensation in the amount of USD 31,318 for financial losses.

C. Loss of profits

1. Facts and contentions

440. The MIE Consortium seeks compensation in the amount of GBP 676,339 and IQD 70,333 (total USD 1,552,707) for loss of profits. The MIE Consortium states that as a result of the extension of the Sub-Contract by 40 weeks, it incurred costs for the "shortfall in contribution to head office and divisional overheads" in the amounts of GBP 653,262 and IQD 49,564 and "office supplies and consumables" in the amounts of GBP 23,077 and IQD 20,769. In its Statement of Claim, the MIE Consortium alleged a loss in the amount of IQD 20,369. This appears to be an arithmetical error, which the Panel has corrected.

441. The MIE Consortium originally classified its claim as a claim for "contract losses", but it is more appropriately classified as loss of profits.

(a) Shortfall in contribution to head office and divisional overheads

442. The MIE Consortium alleges that its offices in Baghdad incurred extra costs as a result of the extension of the Sub-Contract until 23 August 1990. The MIE Consortium states that this element of cost had specific Pound sterling and Iraqi dinar figures allocated to it in the Sub-Contract price, reflecting the costs over the 20 month period of the Sub-Contract until 16 November 1989. It therefore calculated the Pound sterling and Iraqi dinar figures on a weekly basis over that period and multiplied the weekly figure by 40 to give the alleged extra cost resulting from the extension of the period of the Sub-Contract. It alleges that Al Rashid accepted this pro-rata method of calculation and it accordingly submitted its Final Account to Al Rashid on this basis on 14 January 1991.

(b) Office supplies and consumables

443. The MIE Consortium alleges that it incurred extra costs for office supplies and consumables as a result of the extension of the Sub-Contract until 23 August 1990. Because documentary evidence of these alleged costs

is unavailable, it valued the loss by the same mechanism as that adopted in relation to the shortfall costs in paragraph 442 above.

2. Analysis and valuation

444. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

445. In support of its claim, the MIE Consortium provided no documentary evidence specifically related to these alleged losses or of Al Rashid's alleged acceptance of the pro-rata method of calculation. It advised that all supporting documentation was left in Iraq. It relied on the two witness statements of the employee who was the MIE Consortium's project manager. Apart from some general comments on the tasks of the various offices in the 40 week period and identification of some sub-categories of alleged consequential extra costs, the witness statements essentially provide no more than a summary of the method used for detailing the calculations.

446. The Panel has also considered the accounts for the MIE Consortium's members, Mivan Overseas Limited's final job cost print-outs and its job contribution report, which were provided in reply to the article 34 notification. The MIE Consortium did not explain the connection between these documents and its asserted losses and did not attempt to verify its asserted losses making reference to these documents.

447. The Panel finds that the MIE Consortium failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

448. The Panel recommends no compensation for loss of profits.

D. Payment or relief to others

1. Facts and contentions

449. The MIE Consortium seeks compensation in the amount of GBP 239,966 and IQD 189,393 (total USD 1,174,894) for payment or relief to others. The claim is for the alleged costs of maintaining its detained employees and sub-contractors, including salaries, accommodation and food costs between 23 August and 17 December 1990, when its last employee left Iraq. The MIE Consortium also seeks the costs of airfares for repatriation of certain of its employees.

450. The MIE Consortium states that at the time of Iraq's invasion and occupation of Kuwait, it had 52 expatriate (UK) personnel and 70 Thai workers resident in Iraq working on the Palace. Some of these personnel were sub-contractors. The MIE Consortium alleges that the Iraqi authorities detained its employees and coerced them to continue to work on

Project 304X. Most of the work was completed by the time the majority of the Thai workers left Iraq on 9 and 10 September 1990, but European personnel were prevented from leaving Iraq until approximately 17 December 1990. The MIE Consortium states that it had to pay the salaries and food and accommodation costs of its employees and sub-contractors for that period. It also states that it met the cost of the airfares for repatriation of the Thai employees from Jordan, and the costs of two of its employees in a hotel in Jordan immediately prior to repatriation.

451. The MIE Consortium states that its costs in repatriating the Thai workers were above the costs it would normally have incurred to repatriate the employees because it could not use return tickets for the Bangkok - Baghdad sector.

452. The MIE Consortium states that Al Rashid did not contribute towards the upkeep of staff in Iraq or the subsequent costs of repatriation.

453. The MIE Consortium claims GBP 206,302 for salaries, GBP 1,850 and IQD 189,393 for accommodation and GBP 31,814 for food and airfares.

2. Analysis and valuation

(a) Salaries

454. As evidence of its claim for salaries, the MIE Consortium provided a list of the names of its personnel including their date of release, number of days detained following 23 August 1990 and their daily rate of pay; invoices from the sub-contractors for employees' salaries; some payment authorisation slips; and correspondence to the Foreign and Commonwealth Office of the United Kingdom indicating that the MIE Consortium made payments to certain employees during 1995 and 1996. The MIE Consortium did not provide proof of payment of the salaries, whether direct (of its employees) or indirect (of its sub-contractors' employees). The MIE Consortium was requested in the article 34 notification to submit the payroll records. It replied that the relevant records were stolen or destroyed in the MIE Consortium's Baghdad office after 17 December 1990.

455. The Panel finds that the MIE Consortium failed to provide sufficient proof of payment of the salaries, and, therefore, how it suffered any loss.

(b) Accommodation and food

456. The MIE Consortium was unable to provide any documentary evidence of the majority of its claim for payment of accommodation and food costs for its detained employees because it states that all documentary evidence was left in Baghdad. It provided the project manager's witness statements in support of its calculations. The author of the statements was the last of the MIE Consortium's employees to leave Iraq. He stated that the figures were based on his personal knowledge and were "fair and reasonable".

457. As evidence of its claim for payment of the hotel expenses of two European employees in Jordan prior to repatriation (GBP 99), the MIE Consortium provided the hotel invoices evidencing proof of payment. The Panel has held that temporary and extraordinary costs of evacuation and associated activities are compensable in principle.

458. In relation to the claim for accommodation and food costs for its employees while they were detained in Iraq, the Panel finds that the MIE Consortium failed to submit sufficient evidence of payment of these alleged costs and, therefore, how it suffered any loss.

459. In relation to the hotel costs, the Panel finds that the MIE Consortium provided sufficient evidence that these costs were temporary and extraordinary in nature and that it paid these costs in the sum of GBP 99 (USD 193).

(c) Airfares

460. As evidence of its claim for the costs of the airfares, the MIE Consortium provided a facsimile from the airline confirming reservations for the September flight seats and requesting payment from the MIE Consortium; the payment authorisation which was paid on 4 September 1990; a facsimile from Royal Jordanian Airlines confirming reservations for the November flight and the cost. The MIE Consortium did not provide the payment authorisation for the November flights. It did not provide copies of the return tickets for the Bangkok - Baghdad sector as it states that these were left in Iraq and believed to be destroyed. However, the status of the original tickets was verified by the MIE Consortium's project manager. The MIE Consortium did not provide evidence of payment of the costs of the November flight.

461. The Panel finds that the MIE Consortium established that the costs of repatriating the Thai employees in September 1990 were additional and extraordinary in the amount of GBP 28,895 (USD 54,110).

462. The Panel finds that the MIE Consortium failed to provide sufficient evidence in support of its alleged loss for the November flights.

3. Recommendation

463. The Panel recommends compensation in the amount of USD 54,303 for payment or relief to others.

E. Other losses

1. Facts and contentions

464. The MIE Consortium seeks compensation in the amount of GBP 220,785 and IQD 87,828 (total USD 753,020) for other losses. The claim is for the alleged costs of maintaining its employees and sub-contractors between

18 November 1989 and 23 August 1990, including salaries, accommodation and food costs and prolonged commitment of site transport.

465. The MIE Consortium originally classified its claim as "contract losses", but it is more appropriately classified as "other losses".

466. The MIE Consortium advances the same arguments for compensation for these alleged losses as it does for its claim for loss of profits. The basis of its alleged losses for salaries, accommodation and food costs is the aggregate of its actual payments. The basis of calculation of its costs for prolonged commitment of site transport is an average cost of between GBP 51 and GBP 100 per week, for 40 weeks.

2. Analysis and valuation

467. As evidence of its alleged losses, the MIE Consortium provided similar evidence to that which it provided in support of its claim for payment or relief to others. It states that it was unable to provide proof of payment of the employees or their associated costs because the relevant records in the MIE Consortium's Baghdad office were stolen or destroyed after 17 December 1990.

468. The Panel finds that the MIE Consortium failed to submit sufficient evidence of payment of these alleged costs and, therefore, how it suffered any loss.

3. Recommendation

469. The Panel recommends no compensation for other losses.

F. Interest

470. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this Report.

G. Claim preparation costs

471. The MIE Consortium seeks compensation in the amount of GBP 11,968 (USD 22,753) for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by the MIE Consortium for such costs.

H. Recommendation for the MIE Consortium

Table 28. Recommended compensation for the MIE Consortium

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	2,633,201	2,320,913
Financial losses	150,225	31,318
Loss of profits	1,552,707	nil
Payment or relief to others	1,174,894	54,303
Other losses	753,020	nil
Interest (no amount specified)	(--)	(--)
Claim preparation costs	22,753	(--)
Total	6,286,800	2,406,534

472. Based on its findings regarding the MIE Consortium's claim, the Panel recommends compensation in the amount of USD 2,406,534. In relation to the MIE Consortium's claim for contract losses, the Panel finds the dates of loss to be as follows: 14 December 1990 for half of the retention monies payable in Iraqi dinars; 13 December 1991 for the other half of the retention monies payable in Iraqi dinars, and the retention monies payable in Pounds sterling; and 14 December 1990 for the amounts outstanding for the unpaid monthly certificates. In relation to the MIE Consortium's claim for financial losses, the Panel finds the dates of loss to be 1 June 1992 (performance guarantee) and 1 December 1991 (advance payment guarantee). In relation to the MIE Consortium's claim for payment or relief to others, the Panel finds the date of loss to be 4 September 1990.

XVII. THE MORRIS SINGER FOUNDRY LIMITED

473. The Morris Singer Foundry Ltd. ("Morris Singer") is a private limited liability company incorporated in the United Kingdom and now in administrative receivership. It changed its name to Townstate Ltd. (in administrative receivership) after submitting its claim to the Commission. Prior to its entry into administrative receivership on 29 November 1993, Morris Singer was involved in the manufacturing and construction industries, carrying on business as sculpture founders in non-ferrous and precious metals.

474. In the "E" claim form, Morris Singer sought compensation in the amount of GBP 553,362 (USD 1,052,019) for contract losses. The Panel has reclassified certain elements of Morris Singer's claim as financial losses for the purposes of this report.

Table 29. Morris Singer's claim

Claim element	Claim amount (USD)
Contract losses	1,023,629
Financial losses	28,390
Total	1,052,019

A. Contract losses

1. Facts and contentions

475. Morris Singer seeks compensation in the amount of GBP 538,429 (USD 1,023,629) for contract losses allegedly incurred in connection with three contracts for the construction and erection of sculptures in Iraq. Morris Singer stated that it entered into two contracts with Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), for the construction and erection of a flag sculpture (the "flag contract") and a parapet sculpture (the "parapet contract"). Both sculptures were to form part of the Martyrs Monument of Saddam Qaddissiya in Baghdad. The third contract was with the Ministry of Housing and Construction, Baghdad (the "Ministry"), for the construction and erection of four arches for the Arch of Victory (the "arches contract"). In this report, the Panel has addressed the flag contract and the parapet contracts together as they relate to the same monument and Morris Singer treated them as linked contracts.

(a) Flag and parapet contracts

476. The flag contract was signed on 7 January 1988. Under the flag contract, Morris Singer was to receive the sum of GBP 675,000 for the works (15 per cent payable in Iraqi dinars), which were to comprise the

construction of a large three-dimensional aluminium sculpture of the Iraqi flag from an existing small-scale model. Morris Singer was required to build the sculpture in the United Kingdom and then transport it to Baghdad where Morris Singer would install it at the Martyrs Monument site. The projected contract period was 16 months.

477. The parapet contract is dated 22 April 1988 and was signed on 27 April 1988. Under the parapet contract, Morris Singer was to receive the sum of GBP 280,000 for the works (15 per cent payable in Iraqi dinars), which were to comprise the construction of a large three-dimensional bronze parapet to surround the sculpture of the Iraqi flag. Morris Singer was required to build the sculpture in the United Kingdom and then transport it to Baghdad where Morris Singer would install it at the Martyrs Monument site. The projected contract period was 13 months.

478. Morris Singer provided invoices indicating that construction of the flag and parapet sculptures and the arrival of the sculptures in Iraq were completed by 6 June 1989. Erection of both sculptures on site commenced on 19 August 1989. Morris Singer asserted that it completed work under both contracts on 27 November 1989.

479. Morris Singer invoiced Amanat for the completed works under the flag and parapet contracts, which represented 95 per cent of the value under the respective contracts. It claimed that Amanat did not pay a number of the later invoices. In addition, Morris Singer claimed that under each of the contracts (which are almost identical in their terms), Amanat owed it the final contractual payment of a five per cent retention amount payable 12 months after completion of the contracts. Morris Singer accordingly asserted that the retention monies became payable on 27 November 1990.

480. Morris Singer seeks compensation in the amount of GBP 364,198 in respect of the flag and parapet contracts. It claims unpaid invoices in the amounts of GBP 207,500 and IQD 60,922.

481. In its claim submission, Morris Singer sought compensation in the amount of GBP 41,750 for retention monies under the flag and parapet contracts, rather than GBP 47,750 as the contracts themselves provide. The Panel has proceeded on the basis of the figure included in the "E" claim form, i.e., GBP 41,750.

(b) Arches contract

482. Morris Singer seeks compensation for unpaid invoices and outstanding retention monies stated to be payable under the arches contract.

483. Morris Singer did not provide a copy of the arches contract. It submitted an internal report dated 12 May 1991 which states that the contract was "received ... in 1988". Morris Singer asserted it was to receive the sum of GBP 1,976,500 for the works.

484. On the basis of the documents submitted in support of its claim, it appears that Morris Singer seeks compensation in the amount of GBP 174,231. The claim is for unpaid invoices in the amounts of IQD 74,293 and retention monies in the amounts of GBP 23,056 and IQD 5,830.

485. In relation to the claim for retention monies, Morris Singer stated that retention monies were due on 27 November 1990 (as with the retention monies under the flag and parapet contracts) and that this was "12 months after completion of contract".

2. Analysis and valuation

486. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

487. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Morris Singer had, in each case, a contract with Iraq.

(a) Flag and parapet contracts

(i) Unpaid invoices

488. In relation to the dates of performance, the Panel notes that Morris Singer submitted invoices establishing the outstanding amounts, with the exception of the retention monies, which it stated were not invoiced. The last of the invoices is dated 22 August 1989 and was submitted on the commencement of the erection of the flag and parapet sculptures, the milestone for payment of the penultimate instalment under the contracts (the retention monies being the final instalment). Morris Singer sent a document described as the "Completion Certificate" for the flag and parapet sculptures to Amanat on 7 December 1989. A representative of Amanat had signed the Certificate on 27 November 1989. Morris Singer asserted that its works under the contracts were completed by 27 November 1989 upon signature by Amanat's representative of the Completion Certificate.

489. The Panel finds that the unpaid invoices relate entirely to work that was performed prior to 2 May 1990.

490. The Panel recommends no compensation for the claim for unpaid invoices as the invoices relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(ii) Retention money

491. Based on the evidence provided by Morris Singer, the Panel finds that Morris Singer had completed its work under the flag and parapet contracts by 30 November 1989, at the latest, and therefore prior to 2 May 1990. The Panel finds that the retention monies under the contracts fell due on 30 November 1990.

492. This Panel has held that retention money is a form of security held by an employer to ensure fulfilment by a contractor of its obligations to complete the project and to remedy defects after take over of the completed project by the employer.

493. The Panel has previously recommended compensation for loss of retention money where the project was ongoing on 2 August 1990, the claimant was prevented from terminating the project without fault and had submitted sufficient evidence of the amounts retained and had proven that all interim certificates were paid on a timely basis by the employer.

494. In this case, the work under the flag and parapet contracts was completed before 2 August 1990. However, the retention monies under the contracts became due on 30 November 1990. Although Amanat's payments for invoiced work were well overdue as at 2 August 1990, it had met invoices in the past. It did not challenge Morris Singer's request for payment made in April 1990. The Panel finds that Amanat's failure to pay the entire amount sought for retention monies was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends compensation in the amount of GBP 41,750 (USD 80,911) for retention monies outstanding under the flag and parapet contracts.

(b) Arches contract

(i) Unpaid invoices

495. Morris Singer, by referring to retention monies becoming due on 27 November 1990 and that this date was "12 months after completion of contract", has indicated implicitly that the date of completion of its work under the contract was 27 November 1989. The only evidence available shows that Morris Singer performed its work prior to 2 May 1990.

496. The Panel finds that the unpaid invoices elements of the claim for contract losses alleged by Morris Singer relate entirely to work that was performed prior to 2 May 1990.

497. The Panel recommends no compensation for the unpaid invoices elements of the claim for contract losses as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(ii) Retention money

498. With reference to the retention money, the only evidence provided by Morris Singer was a paragraph of an internal report dated 12 May 1991 and a computer generated schedule of the same date, which appears to record the payments required under the contract and the matching invoices and their status. Morris Singer was requested in the article 34 notification to submit the arches contract, invoices, payment certificates, progress reports and actual payments received. Morris Singer failed to submit the requested information which would have enabled the Panel to assess its assertions that it was owed retention monies and that those retention monies became due and payable on 27 November 1990.

499. The Panel recommends no compensation for the retention monies allegedly outstanding under the arches contract as Morris Singer did not provide sufficient evidence to support its claim for the alleged retention monies.

3. Recommendation

500. The Panel recommends compensation in the amount of USD 80,911 for contract losses.

B. Financial losses

1. Facts and contentions

501. Morris Singer seeks compensation in the amount of GBP 14,933 (USD 28,390) for loss of the value of IQD 3,141 cash alleged to have been left in the Mansour Hotel in Baghdad and for loss of the value of IQD 4,774 alleged to have been left in its bank account with Rafidain Bank in Baghdad. The account, which was in the name of Morris Singer's overseas representative, was used for the receipt of the Iraqi dinar portions under the three contracts and payment of local expenses.

502. Morris Singer originally classified these elements of loss as "contract losses", but they are more appropriately classified as financial losses.

2. Analysis and valuation

503. Morris Singer provided no evidence regarding its claim for cash left at the hotel in Baghdad.

504. As evidence of its claim for loss of funds in its bank account in Iraq, Morris Singer provided a schedule of payments into the bank account which formed part of its internal report of 12 May 1991, a description of how the account was set up and operated and details of the alleged lost amounts. Morris Singer provided no contemporaneous records, bank statements or the like.

505. The Panel finds that Morris Singer failed to submit sufficient evidence to prove the existence or ownership of the cash in the hotel or the account with the Rafidain Bank, or that the funds have been appropriated, removed, stolen or destroyed, and, therefore, how it suffered any loss.

3. Recommendation

506. The Panel recommends no compensation for financial losses.

C. Recommendation for Morris Singer

Table 30. Recommended compensation for Morris Singer

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,023,629	80,911
Financial losses	28,390	nil
Total	1,052,019	80,911

507. Based on its findings regarding Morris Singer's claim, the Panel recommends compensation in the amount of USD 80,911. The Panel finds the date of loss to be 30 November 1990.

XVIII. ROTARY (INTERNATIONAL) LIMITED

508. Rotary (International) Limited ("Rotary") is a company incorporated in the United Kingdom, which provides electrical and mechanical engineering services abroad.

509. In the "E" claim form, Rotary sought compensation for business transaction or course of dealing in the amounts of IQD 231,837, GBP 3,856,043 and USD 388,561, and compensation for tangible property losses in the amount of GBP 136,706. In relation to the amounts claimed for business transaction or course of dealing, as the claimed amounts relate to losses allegedly incurred under its contracts with respect to projects in Iraq, part of the claim has been reclassified as a claim for contract losses and the remainder of the claim as a claim for interest.

510. Rotary's Statement of Claim also referred to claim preparation costs in the amount of GBP 14,271. Although these costs were not included in the "E" claim form, the Panel has accordingly considered these costs as part of Rotary's claim.

511. The Panel also notes that Rotary's claim for payment or relief to others contained an arithmetic error, which is described at paragraph 581, infra. The Panel has corrected the error.

512. After taking into account these corrections and reclassifications, the Panel has considered Rotary's claim as a claim for compensation in the amount of IQD 231,837 (USD 745,456), GBP 4,006,920 (USD 7,617,717) and USD 176,581 for contract losses, loss of tangible property, payment or relief to others, financial losses, interest and claim preparation costs.

Table 31. Rotary's claim

Claim element	Claim amount (USD)
Contract losses	7,786,682
Loss of tangible property	191,456
Payment or relief to others	55,621
Financial losses	68,441
Interest	410,423
Claim preparation costs	27,131
Total	8,539,754

A. Contract losses

1. Facts and contentions

513. Rotary seeks compensation in the amounts of IQD 231,837, GBP 3,610,803 and USD 176,581 (total USD 7,786,682) for contract losses allegedly incurred in connection with the Al Sijood Palace Project in Iraq ("Project 304X") and Projects 400 and 600, also in Iraq.

(a) Project 304X

514. Rotary seeks compensation in the amounts of GBP 3,610,803 and IQD 215,104 for contract losses allegedly incurred under the sub-contract for works on Project 304X. The claim has four components: the deferred payment portion in the amount of GBP 763,542; the balance due under the credit loan agreement in respect of goods and materials originating in the United Kingdom ("UK goods") in the amount of GBP 1,590,017; the balance due under the letter of credit for goods and materials originating outside the United Kingdom ("non-UK goods") in the amount of GBP 222,370; and the residual balance of the sub-contract price including variations, described by Rotary as the "shortfall", in the amount of GBP 1,034,874.

515. At the time of Iraq's invasion and occupation of Kuwait, Rotary, together with its joint venture partner, Mivan Overseas Limited ("Mivan"), a company incorporated in the United Kingdom, was engaged as a sub-contractor on Project 304X. The contractor on the project was the Special Projects Implementation Authority of Iraq ("SPIA"). The employer on the project was the Ministry of Housing and Construction of Iraq (the "Employer"). The sub-contract entered into between the joint venture and SPIA was dated 29 June 1987. The works, which comprised mechanical and electrical services installations and the training of Iraqi engineers and technicians, were due to be carried out within a period of 21 months. During the term of the sub-contract, the parties agreed upon variations to the works, which resulted in a revised completion date for work of 31 August 1990.

516. The total price of the sub-contract (excluding variations) was GBP 11,746,800 and IQD 500,000. Rotary states that the variations (both agreed and non-agreed) had the effect of increasing the sub-contract price to GBP 13,559,476 and IQD 705,989.

517. Rotary signed an agreement with Mivan dated 23 November 1987 setting out the terms of the joint venture (the "joint venture agreement"). Under the terms of the joint venture agreement, Rotary was to pay Mivan a commission of three per cent of all monies certified for payment and paid to the joint venture under the sub-contract entered into for Project 304X, excluding any works carried out by Mivan. Payments of the commission were to be made to Mivan within seven days of Rotary receiving such monies from

the contractor. Under the joint venture agreement, Rotary was solely responsible for the execution of the project works.

518. The sub-contract stipulated that the portion of the price payable in Iraqi dinars, IQD 500,000, was to be paid locally in accordance with the progress of the works. Of the portion of the price payable in Pounds sterling, GBP 11,746,800, 15 per cent (or GBP 1,762,020) was financed by way of a loan made available by Midland Bank.

519. Of the 15 per cent portion, the amount of GBP 998,478 was paid in advance on 31 December 1987. This advance payment was to be repaid through 14 equal monthly instalments. The amount of GBP 763,542, plus interest, was to be deferred for 24 months, after the completion of various stages of the works. The deferred element was to be paid by means of an irrevocable letter of credit, dated 28 November 1987, in proportion to the payments made under the credit loan agreement with respect to the 85 per cent financed Pound sterling portion.

520. The remaining 85 per cent (or GBP 9,984,780) was provided to the Employer under a credit loan agreement entered into between the Governments of Iraq and the United Kingdom and supported by the Export Credits Guarantee Department of the United Kingdom ("ECGD"). The ECGD is a United Kingdom Government credit agency that provides financial support for international trade transactions.

521. As a result of variations to the project works and changes in design, some materials originating outside the United Kingdom were required. On 24 May 1989, the Employer established an additional letter of credit in the amount of GBP 777,802. Rotary states that this letter of credit failed to provide adequate coverage for the non-UK goods. At the time of Iraq's invasion and occupation of Kuwait, negotiations for another letter of credit were in progress to cover the shortfall with respect to the non-UK goods as well as the overall shortfall under the sub-contract for the works on Project 304X, which resulted from the increase in total price due to variations.

522. In November 1988, SPIA was replaced as the main contractor by Al Rashid Contracting Company ("Al Rashid"), an Iraqi entity.

523. Rotary states that, following Iraq's invasion and occupation of Kuwait, the Iraqi authorities "guaranteed" that personnel working on Project 304X would be allowed to leave as soon as work on the project had been completed, to the extent that the performance of the work was still possible. The majority of the joint venture's Thai workers were allowed to depart Iraq in September 1990. Another group left in October 1990. The last employees of Rotary working under the sub-contract were permitted to leave Iraq in December 1990, by which time the sub-contract works had been completed.

524. Although the work under the sub-contract was essentially completed by December 1990, the Employer did not issue a certificate of practical completion. The sub-contract provided for a maintenance period of 12 months from the date of practical completion. However, Rotary states that all defects already identified had been remedied prior to its departure from Iraq.

525. Rotary seeks compensation for the entire amount of the contract losses allegedly incurred by the joint venture notwithstanding that, under the terms of the joint venture agreement, Mivan was entitled to three per cent of the monies paid to the joint venture. Rotary states that a settlement agreement was entered into between the joint venture partners pursuant to which Mivan agreed to accept payment of GBP 30,000 "in full and final settlement" of any further commission due to it under the joint venture agreement. Rotary provided a copy of a letter dated 24 February 1993 from Mivan to Rotary evidencing this settlement.

526. Rotary provided as evidence of its alleged losses a substantial amount of documentation relating to the joint venture agreement, the sub-contract and the related financing arrangements, the shipment of materials to Iraq, and the variations to the sub-contract. It also provided copies of invoices relating to the deferred payment element of the Pound sterling portion of the sub-contract and relating to the Iraqi dinar portion of the sub-contract.

527. In its reply to the article 34 notification, Rotary stated that the remaining documentation detailing the work performed was left in Iraq.

(b) Projects 400 and 600

528. Rotary seeks compensation in the amounts of IQD 16,733 and USD 176,581 for contract losses allegedly incurred under the contracts for works on Projects 400 and 600.

529. In the "E" claim form, Rotary sought compensation in the amounts of IQD 16,733 and USD 388,561 for contract losses in respect of Projects 400 and 600. However, the Panel finds that Rotary, in the calculation of its claim, did not take into account payments received by it for work performed on Projects 400 and 600 in the amount of USD 211,980. The Panel considers that the correct amount for the United States dollar component of the claim should be USD 176,581.

530. On 22 January 1989, Rotary entered into two contracts with the Al Fao General Establishment of Iraq ("Al Fao") in respect of Projects 400 and 600. The contracts were for the supply and installation of air conditioning at a factory complex. Project 400 was to be completed by 4 June 1989 and Project 600 by 16 July 1989.

531. Each contract stipulated a contract price of IQD 150,000. Of the total contract price, 37.5 per cent (or IQD 56,250) was to be paid in Iraqi dinars and 62.5 per cent (or USD 300,833) in United States dollars through an irrevocable letter of credit issued by the Central Bank of Iraq. Payments were to be made on a monthly basis, following the submission of progress certificates to Al Fao. The contracts also provided for an advance payment of 10 per cent of the total contract price.

532. On 25 January 1989, Rotary agreed to carry out variations of up to 20 per cent of the contract value for each contract, at the rates and prices contained in the bill of quantities.

533. Rotary states that it had completed work under both contracts by August 1989. Al Fao issued a practical certificate of completion in June 1989 and a final acceptance certificate (subject to clearances from the customs and tax authorities) on 18 August 1989. Between November 1989 and August 1990, the responsible Iraqi authorities confirmed that Rotary had complied with customs and tax formalities.

534. On 18 November 1989, Rotary submitted its final account to Al Fao.

535. On 18 August 1990, Al Fao wrote to Rotary stating that it had instructed the Central Bank of Iraq to pay the amount of USD 77,839 to Rotary on 16 June 1990, but that "due to the present circumstances" the sum had not yet been processed.

2. Analysis and valuation

(a) Project 304X

(i) Amounts payable in Pounds sterling

a. Deferred payment portion

536. In respect of the deferred payment portion of the sub-contract in the amount of GBP 763,542, Rotary states that, by 11 December 1990, it had issued five invoices for amounts falling due over the course of the project totalling GBP 522,588, plus interest for two years. Rotary states that it was prevented from billing the balance of the deferred payment portion, GBP 240,954, due to Iraq's invasion and occupation of Kuwait.

537. Rotary provided as evidence of its alleged losses copies of invoice nos. 2001 to 2005 dated from 22 May to 1 August 1990. (Invoice no. 2005, although dated 1 August 1990, was sent to Al Rashid for payment on 11 December 1990).

538. From the evidence provided by Rotary, it is apparent that invoice nos. 2001 and 2002 in the total amount of GBP 408,307 relate to work performed during March and April 1990. The remaining three invoices (invoice nos. 2003, 2004 and 2005) in the total amount of GBP 114,280 relate to work

performed between May 1990 and Rotary's withdrawal from Iraq in December 1990.

539. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

540. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Rotary had a contract with Iraq.

541. The Panel finds that the contract losses alleged by Rotary in connection with invoice nos. 2001 and 2002 relate entirely to work that was performed prior to 2 May 1990. The Panel recommends no compensation for contract losses in connection with invoice nos. 2001 and 2002 as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

542. The Panel recommends compensation in the amount of GBP 114,280 (USD 218,677) in respect of invoice nos. 2003, 2004 and 2005.

543. In respect of Rotary's claim for the unpaid balance of GBP 240,954 for the deferred payment portion, which was not billed to the contractor, the Panel finds that Rotary did not provide sufficient evidence to indicate the level of work performed after the date of issue of invoice no. 2005 (1 August 1990) and its withdrawal from Iraq in December 1990. Although Rotary almost certainly performed further work after 1 August 1990, particularly in relation to variations, the Panel finds that Rotary provided insufficient evidence to enable it to quantify this work.

b. UK goods - loan finance

544. Rotary's claim for the balance due under the credit loan agreement for UK goods, GBP 1,590,017, is calculated as the difference between the payments received by Rotary upon shipment of the UK goods, and upon their delivery and installation at the project site in the amount of GBP 8,394,763, and the sub-contract price for the UK goods in the amount of GBP 9,984,780.

545. Rotary provided as evidence of its alleged losses handwritten schedules of site invoices and shipment qualifying certificates, which confirm the amounts received by Rotary. However, it did not provide evidence in support of the total value of the work allegedly performed, goods delivered to, and installed at, the project site.

546. The invoices provided by Rotary in respect of the deferred payment portion of the sub-contract (invoice nos. 2001 to 2005) indicate the value of the deferred payment portion of the work only. They do not indicate the total value of the work performed by Rotary. It is, therefore, not

possible to determine the value of work that was performed by Rotary prior to its withdrawal from Iraq in December 1990.

547. From the evidence provided, it is apparent that the amount claimed of GBP 1,590,017 includes retention monies in the amount of GBP 587,340. The sub-contract stipulates that amounts of up to five per cent of the total price would be retained by the contractor. There is no reference in the sub-contract as to when the retention monies were to be released.

548. The Panel recommends no compensation for the alleged unpaid amounts in respect of UK goods, as Rotary did not provide sufficient evidence to support its claims for such alleged losses.

c. Non-UK goods - letter of credit

549. Rotary claims GBP 222,370 for the balance due under the letter of credit for non-UK goods. This is calculated as the difference between the ceiling of the letter of credit issued on 24 May 1989, GBP 777,802, and the amount drawn under the letter of credit, GBP 555,432.

550. Rotary provided as evidence of its alleged losses a handwritten schedule of the payments received in respect of non-UK goods, indicating the amounts paid and the date of payment. The latest date of payment listed on the schedule is 8 August 1990. Rotary also provided a confirmation from the Bank of Ireland that, as at 4 February 1994, a total of GBP 555,432 had been drawn under the letter of credit in respect of non-UK goods shipped to Iraq and installed at the project site. The Panel was unable to reconcile the amounts appearing in the handwritten schedule of payments with the amount confirmed by the Bank of Ireland as having been drawn.

551. Rotary provided no other evidence to support this part of its claim.

552. The Panel finds that it is likely that Rotary would have completed delivery or installed a portion of the goods covered by the letter of credit after 2 May 1990, which were not included in the amount drawn under the letter of credit. However, the Panel recommends no compensation for the alleged unpaid amounts in respect of the non-UK goods, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

d. Shortfall

553. Rotary seeks compensation in the amount of GBP 1,034,874 for the alleged shortfall between the total price (revised to take account of variations to the sub-contract) and the total value of the available finance for Project 304X. Rotary states that, at the time of Iraq's invasion and occupation of Kuwait, negotiations for an additional letter of credit were in progress. This letter of credit was intended to cover the shortfall with respect to the non-UK goods as well as the overall shortfall

under the sub-contract for the works on the project, which resulted from the increase in the total price due to variations. However, those negotiations had not been finalised.

554. Rotary provided a significant amount of documentation concerning the variations. However, it provided no evidence to indicate the value of the completed work under the sub-contract (as revised to take account of variations) or the dates of performance of the work. Further, it appears that none of the claimed amounts were invoiced by Rotary pending the issue of an additional letter of credit.

555. The Panel recommends no compensation for the alleged shortfall, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

(ii) Amounts payable in Iraqi dinars

556. Rotary seeks compensation in the amount of IQD 215,104 for the allegedly unpaid portion of the sub-contract payable in Iraqi dinars. Rotary's claim is calculated as the difference between the amount due under the terms of the sub-contract (including variations) in the amount of IQD 705,989 and payments received by it in the amount of IQD 490,885.

557. Rotary provided as evidence of its alleged losses copies of invoices, which confirm the amounts received by Rotary. However, it did not provide evidence in support of the total value of the work allegedly performed.

558. Although Rotary provided evidence to indicate approval by the main contractor of some of the variations to the sub-contract, it provided no evidence that it performed this work.

559. The Panel recommends no compensation for the unpaid Iraqi dinar portion of the sub-contract, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

(b) Projects 400 and 600

560. Rotary provided as evidence of its alleged losses copies of the contracts for both projects, each dated 22 January 1989. It also provided a copy of the letter of credit in respect of the projects issued on 15 February 1989 and stated to be valid until 12 September 1989, and documents showing drawings in the amount of USD 211,980 under the letter of credit.

561. Rotary also provided a copy of the final account in respect of the projects, and correspondence that shows that this final account was sent to Al Fao on 18 November 1989. Further correspondence provided shows Rotary's attempts to receive payment of the outstanding amounts.

562. In its reply to the article 34 notification, Rotary stated that it was unable to provide copies of the practical certificate of completion and the final acceptance certificate, as those documents were left in Iraq.

563. Based on the evidence provided and Rotary's own statement in its claim submission, the Panel finds that work under both contracts was completed by 18 August 1989, when the final acceptance certificate was issued by Al Fao subject to clearances.

564. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

565. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Rotary had, in each case, a contract with Iraq.

566. The Panel finds that the contract losses alleged by Rotary relate entirely to work that was performed prior to 2 May 1990.

567. The Panel recommends no compensation for contract losses in connection with Projects 400 and 600 as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

568. The Panel recommends compensation in the amount of USD 218,677 for contract losses.

B. Loss of tangible property

1. Facts and contentions

569. Rotary seeks compensation in the amount of GBP 100,706 (USD 191,456) for loss of tangible property. The claim is for the alleged loss of office equipment, household appliances and vehicles located at Rotary's office in Baghdad and at its site office at Project 304X. Rotary's claim for loss of tangible property comprises: "airfreight consignments", "overland consignments", "household appliances", "office equipment" and "vehicles".

570. Rotary states that it was forced to abandon the tangible assets when it finally departed Iraq in December 1990.

2. Analysis and valuation

571. In respect of the claim for "airfreight consignments", Rotary provided as evidence of its alleged losses a detailed list of assets containing details of invoice numbers, dates of purchase, description, purported value as new and purported value at 2 August 1990. The majority of the items

detailed on the list are supported by a copy of the original purchase invoice together with air waybills and other transit documentation dated between June 1988 and October 1989. This documentation constitutes evidence of Rotary's title to the assets and of their exportation to Iraq.

572. In respect of the claim for "overland consignments", Rotary provided as evidence of its alleged losses a detailed list of assets containing details of the invoice numbers, dates of purchase, description, purported value as new and purported value at 2 August 1990. The items detailed on the list are supported by copies of the original purchase invoices, packing lists, and some certificates of origin. Rotary provided no transit or import documentation. Accordingly, although Rotary provided evidence of its title to the assets, it provided no evidence of their presence in Iraq.

573. In respect of the claims for "household appliances" and "office equipment", Rotary provided as evidence of its alleged losses a list detailing the description, value and the location in respect of each appliance. Rotary provided no further supporting documentation.

574. In respect of the claim for "vehicles", Rotary provided as evidence of its alleged losses extracts from its audited accounts for the years ending 1988 and 1989 showing that the value of the vehicles had been recorded as "fixed assets". Rotary provided no copies of the purchase invoices for the vehicles or other supporting documentation.

575. In its reply to the article 34 notification, Rotary stated that it was unable to provide any further documentation in respect of its claim for loss of tangible property, as "all papers and documents of any kind relating to the Iraqi branch remained in Iraq".

576. In order to establish a loss of tangible property claim, this Panel has found that a claimant must submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

577. The Panel finds that Rotary provided sufficient evidence of its ownership, the value and the presence in Iraq, of the tangible assets included in its claim for "airfreight consignments". The Panel recommends compensation in the amount of GBP 4,162 (USD 7,912) for "airfreight consignments".

578. In respect of the other items included in the claim for loss of tangible property, the Panel finds that Rotary did not submit sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Iraq. The Panel finds that Rotary failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

579. The Panel recommends compensation in the amount of USD 7,912 for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

580. Rotary seeks compensation in the amount of GBP 29,357 for payment or relief to others. The claim is for the alleged costs of evacuating Rotary's employees (106 Thai workers and 12 expatriate staff from the United Kingdom) from Iraq to their home countries.

581. In the "E" claim form, Rotary made an arithmetic error in the calculation of the claim amount. The correct claim amount is GBP 29,257 (USD 55,621).

582. Rotary classified its loss in respect of the additional cost of airfares as a contract loss. However, as this aspect of the claim relates to payment or relief to others, it has been reclassified as such.

583. Rotary calculated the amount of its claim as the difference between the alleged actual costs incurred by it in evacuating its personnel from Iraq and the costs of repatriating its employees, which it alleges it would have incurred under normal circumstances upon the natural completion of Project 304X.

584. Rotary states that it purchased airfares for the 106 Thai workers and 12 expatriate staff at a total cost of GBP 67,468. However, it states that, of these employees, 20 Thai workers and six expatriate staff would have remained in Iraq under normal circumstances, but were forced to return to their home countries in September and October 1990 as a result of Iraq's invasion and occupation of Kuwait. As a consequence, Rotary incurred additional costs in the amount of GBP 38,211 in connection with the airfares of the 20 Thai workers and six expatriate staff.

2. Analysis and valuation

585. Rotary provided as evidence of its alleged losses a schedule of the costs incurred and copies of the relevant invoices. It also provided an application for a telegraphic foreign transfer for the sum of USD 2,300 in favour of Orient Transport Company, Jordan, for "transport of Thais to Amman". The Panel is satisfied that the application constitutes sufficient evidence of payment of this expense and recommends compensation in the amount of USD 2,300. However, in relation to the other amounts claimed, the Panel finds that Rotary did not provide sufficient proof of payment.

586. The Panel finds that Rotary failed to provide evidence to support the actual costs incurred in repatriating its employees and its estimate of the

repatriation costs that it would have incurred in normal circumstances. Accordingly, the Panel recommends no compensation.

3. Recommendation

587. The Panel recommends compensation in the amount of USD 2,300 for payment or relief to others.

D. Financial losses

588. Rotary seeks compensation in the amount of GBP 36,000 (USD 68,441) for financial losses. The claim is for advance rent for the months September to December 1990 allegedly paid by Rotary in respect of three villas in Iraq.

589. Rotary included its claim for advance rent in its claim for loss of tangible property. However, as this aspect of the claim relates to an alleged financial loss, it has been reclassified as such.

590. Rotary states that as a result of the staffing levels required for Project 304X, it had to rent and furnish accommodation for its employees. The accommodation was allegedly abandoned after Iraq's invasion and occupation of Kuwait.

591. Rotary provided as evidence of its alleged losses a schedule summarising the advance payments allegedly made for each of the three villas. Rotary stated that it was unable to provide any supporting documentation for these costs.

592. The Panel finds that Rotary failed to provide sufficient evidence of its losses.

593. The Panel recommends no compensation for financial losses.

E. Interest

594. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

F. Claim preparation costs

595. Rotary seeks compensation in the amount of GBP 14,271 (USD 27,131) for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Rotary for such costs.

G. Recommendation for Rotary

Table 32. Recommended compensation for Rotary

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	7,786,682	218,677
Loss of tangible property	191,456	7,912
Payment or relief to others	55,621	2,300
Financial losses	68,441	nil
Interest	410,423	(--)
Claim preparation costs	27,131	(--)
Total	8,539,754	228,889

596. Based on its findings regarding Rotary's claim, the Panel recommends compensation in the amount of USD 228,889. In relation to Rotary's claim for contract losses, the Panel finds the dates of loss to be as follows: 2 August 1990 for invoice no. 2003; 3 October 1990 for invoice no. 2004; and 11 December 1990 for invoice no. 2005. In relation to Rotary's claim for loss of tangible property, the Panel finds the date of loss to be 2 August 1990. In relation to Rotary's claim for payment or relief to others, the Panel finds the date of loss to be 12 September 1990.

XIX. SUTTON SERVICES INTERNATIONAL LIMITED

597. Sutton Services International Limited ("Sutton") is a limited liability company incorporated in the United Kingdom. Prior to its incorporation in 1991, Sutton was operating in the form of a partnership known as Sutton Group Services. Sutton seeks compensation in the amount of GBP 78,230 (USD 148,726) for loss of profits, loss of tangible property, payment or relief to others, other losses and interest.

Table 33. Sutton's claim

Claim element	Claim amount (USD)
Loss of profits	24,201
Loss of tangible property	27,409
Payment or relief to others	52,917
Other losses	4,647
Interest	39,552
Total	148,726

A. Loss of profits

1. Facts and contentions

598. Sutton seeks compensation in the amount of GBP 12,730 (USD 24,201) for loss of profits. At the time of Iraq's invasion of Kuwait, Sutton was engaged as a sub-contractor on the Al Sijood Palace Project in Iraq ("Project 304X"). The contractor on Project 304X was Rotary (International) Limited (the "contractor"). The sub-contract arrangement is evidenced by a purchase order issued by the contractor to Sutton dated 20 December 1989. Sutton was to test and commission the heating, chilled water, ventilation and air conditioning systems that were to be installed by the contractor.

599. Sutton's claim is for loss of overhead and profits, calculated as the difference between the contractual rate of GBP 16 per hour charged to the contractor and the rate of GBP 10.56 per hour paid to its employees. The claim is calculated for the months August to December 1990 based on a 10 hour day for one engineer and one technician.

2. Analysis and valuation

600. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

601. In support of its claim, Sutton provided a letter dated 12 September 1989 addressed to the contractor in which it set out the hourly rates it

intended to charge the contractor for its services. It also provided a copy of a purchase order from the contractor dated 20 December 1989 confirming the hourly rates and correspondence between Sutton and the contractor evidencing the suspension of work following Iraq's invasion and occupation of Kuwait and the subsequent efforts by Sutton to be paid for the work performed. Sutton also provided copies of payroll records and an invoice dated 9 January 1991 addressed to the contractor requesting payment for work performed during the period 2 August to 20 December 1990.

602. The Panel recommends no compensation as Sutton failed to provide sufficient evidence to substantiate its loss of profits claim. Further, the Panel finds that Sutton failed to explain how its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

603. The Panel recommends no compensation for loss of profits.

B. Loss of tangible property

1. Facts and contentions

604. Sutton seeks compensation in the amount of GBP 14,417 (USD 27,409) for loss of tangible property. The claim is for the alleged loss of Sutton's test instrumentation, which was left behind at the project site after its employees departed Iraq. The Al Sijood Palace subsequently suffered bomb damage and the equipment is presumed destroyed.

2. Analysis and valuation

605. Sutton provided as evidence of its alleged losses a list of 13 items of equipment together with the manufacturer, type, cost, number of items and value. Sutton also provided copies of a telex dated 10 January 1990 to the contractor advising it that "two cartons of test equipment had dispatched" on the same date, an air waybill dated 10 January 1990, which refers to "two cartons of test equipment" (final destination - Baghdad), a rail consignment note dated 18 July 1990 (destination unclear), and an air waybill dated 17 July 1990 in respect of one package containing "passports". The documents described above do not contain itemised descriptions of the equipment that was dispatched to Iraq. There is no evidence that Sutton owned the equipment or that the 13 items of equipment included in Sutton's claim were actually dispatched to Iraq.

606. Sutton stated that it was unable to provide further documentation, as it retained its files for the statutory period of seven years only and, as such, all invoices had been destroyed.

607. The Panel finds that Sutton did not submit sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Iraq. The Panel finds that Sutton

failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

608. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

609. Sutton seeks compensation in the amount of GBP 27,834 (USD 52,917) for payment or relief to others. The claim is for the salaries and bonuses allegedly paid to two of Sutton's employees who were working on Project 304X. The amounts claimed were allegedly paid to the two engineers during the period August 1990 to February 1991.

610. After Iraq's invasion of Kuwait, the contractor's project manager advised the two employees that it was in their best interests to continue to work on Project 304X as a display of good faith to ensure that they were able to leave Iraq at the first available opportunity.

611. The first employee attempted to flee the country, however, he was intercepted at the Syrian border on 1 September 1990 and was held hostage by the Iraqi authorities until 24 December 1990.

612. The second employee continued to work each day from 8 a.m. to 10 p.m. to placate the Iraqi authorities until his release on 20 December 1990.

613. Sutton states that it continued to pay its two employees their basic salary (at the rate of GBP 916.67 per month) as well as bonuses (calculated at GBP 5.25 per hour), plus extra hourly payments for working a sixth day every week.

614. After their return to the United Kingdom in December 1990, the second employee resumed work in February 1991 and the first employee resumed work at the end of March 1991.

615. Sutton claims that it attempted to recover the salary expenses from Rotary for the period August to December 1990, but was unsuccessful in doing so.

616. Sutton seeks compensation for the salary payments it allegedly made to the second employee during the period from August 1990 to February 1991 and to the first employee from August 1990 to March 1991 as well as bonus payments allegedly made to both employees from August to December 1990.

2. Analysis and valuation

617. Sutton provided as evidence of its alleged losses payroll records from August 1990 to March 1991 for its two employees along with copies of their

employment contracts. These records do not, however, make reference to the bonuses paid to the two employees.

618. The Panel finds that Sutton's salary payments during the period of the detention of its employees are compensable in principle.

619. The Panel finds that Sutton provided sufficient evidence that it paid the salaries of the two employees. However, it did not provide sufficient evidence that it paid the bonuses. The Panel, therefore, recommends compensation in the amount of GBP 9,124 (USD 17,752) for the salary payments made to the two employees from 3 August 1990 until their respective dates of departure from Iraq.

3. Recommendation

620. The Panel recommends compensation in the amount of USD 17,752 for payment or relief to others.

D. Other losses

621. Sutton seeks compensation in the amount of GBP 2,444 (USD 4,647) for "other losses". Sutton claims GBP 1,059 for consultants' fees allegedly incurred in September and October 1990 and GBP 1,385 for legal fees allegedly incurred in 1991.

622. Sutton states that it sought the advice of construction contract consultants after the contractor suspended the contract with Sutton. Sutton further states that it sought the advice of legal experts in trying to recover outstanding debts from the contractor.

623. In support of its claim for fees paid to construction contract consultants, Sutton provided invoices from the consultants dated 30 September and 31 October 1990. However, Sutton did not provide proof of payment of the consultants' fees.

624. In support of its claim for legal fees, Sutton provided invoices dated from 20 February to 23 August 1991. However, Sutton did not provide proof of payment of the legal fees.

625. The Panel recommends no compensation for other losses as Sutton failed to provide sufficient evidence of its alleged losses.

626. The Panel recommends no compensation for other losses.

E. Interest

627. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

F. Recommendation for Sutton

Table 34. Recommended compensation for Sutton

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of profits	24,201	nil
Loss of tangible property	27,409	nil
Payment or relief to others	52,917	17,752
Other losses	4,647	nil
Interest	39,552	(--)
Total	148,726	17,752

628. Based on its findings regarding Sutton's claim, the Panel recommends compensation in the amount of USD 17,752. The Panel finds the date of loss to be 1 October 1990.

XX. RECOMMENDATIONS

629. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

a. Eteco S.A.: USD 8,657;

b. Mohamed Ahmed Mohamed Abdel Maksoud: NIL;

c. Germot International S.A.: USD 179,124;

d. Kyudenko Corporation: NIL;

e. Shimizu Corporation: NIL;

f. Karim Bennani and Partners: USD 96,690;

g. Petrogas, Gas-Systems B.V.: NIL;

h. Institute Hydroproject: USD 821,745;

i. SwedPower AB: NIL;

j. MŞM-Endustri AŞ: NIL;

k. Sezai Türkeş Feyzi Akkaya Construction Company: NIL;

l. Alfred McAlpine Services and Pipelines Ltd.: USD 82,684;

m. Mivan Overseas Limited: NIL;

n. Mivan Overseas Limited and Interiors International Limited: USD 2,406,534;

o. The Morris Singer Foundry Limited (in administrative receivership): USD 80,911;

p. Rotary (International) Limited: USD 228,889; and

q. Sutton Services International Limited: USD 17,752.

Geneva, 27 June 2000

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner

Annex XI

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/Dec.105 (2000)
29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the fourteenth instalment of "E3" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fourteenth instalment of "E3" claims, covering 17 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 629 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Belgium	1	-	687,464	8,657
Egypt	-	1	1,913,748	nil
France	1	-	601,879	179,124

1/ The text of the report appears in document S/AC.26/2000/19.

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Japan	-	2	2,385,572	nil
Morocco	1	-	2,892,403	96,690
Netherlands	-	1	1,242,225	nil
Russian Federation	1	-	1,596,882	821,745
Sweden	-	1	447,890	nil
Turkey	-	2	574,367	nil
United Kingdom	5	1	22,690,296	2,816,770
Total	9	8	35,032,726	3,922,986

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec. 100 (2000)),

4. Recalls that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex XII

UNITED NATIONS

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTEENTH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning sixteen claims included in the fifteenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. Based on its review of the claims presented to it to date and the findings of other panels of commissioners contained in their reports and recommmendations, this Panel has set out some general propositions concerning construction and engineering claims filed on behalf of corporations (the "'E3' Claims"). The general propositions are contained in Annex I entitled "Summary of General Propositions" (the "Summary"). The Summary forms part of, and is intended to be read together with, this report.

3. Each of the claimants included in the fifteenth instalment had the opportunity to provide the Panel with information and documentation concerning the claims. The Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other Panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel has further amplified both procedural and substantive aspects of the process of formulating recommendations in the Summary to its consideration of the individual claims.

I. PROCEDURAL HISTORY

A. The procedural history of the claims in the fifteenth instalment

4. A summary of the procedural history of the 'E3' Claims is set down in paragraphs 10 to 18 of the Summary.

5. On 16 February 2000, the Panel issued a procedural order relating to the claims included in the fifteenth instalment. None of the claims presented complex issues, voluminous documentation or extraordinary losses

that would require the Panel to classify any of them as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus had an obligation to complete its review of the claims within 180 days of the date of the procedural order, pursuant to article 38(c) of the Rules.

6. In view of the review period and the available information and documentation, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. Nonetheless, due process, the provision of which is the responsibility of the Panel, has been achieved by the insistence of the Panel on the observance by claimants of the article 35(3) requirement for sufficient documentary and other appropriate evidence.

7. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work.

B. The claimants

8. This report contains the Panel's findings with respect to the following claims for losses allegedly caused by Iraq's invasion and occupation of Kuwait:

(a) Lenzing Aktiengesellschaft, a corporation existing under the laws of the Republic of Austria, which seeks compensation in the total amount of USD 6,522,682;

(b) Koncar Elektroindustrija d.d., a corporation organised under the laws of the Republic of Croatia, which seeks compensation in the total amount of USD 8,440,131;

(c) Stadler & Schaaf OHG, a corporation organised under the laws of the Federal Republic of Germany, which seeks compensation in the total amount of USD 20,055;

(d) Krupp Industrietechnik GmbH, a corporation organised under the laws of the Federal Republic of Germany, which seeks compensation in the total amount of USD 92,771;

(e) Unitech Limited, a corporation organised under the laws of the Republic of India, which seeks compensation in the total amount of USD 25,000;

(f) Icomsa Engineering Costruzioni e Impianti S.p.A., a corporation organised under the laws of the Italian Republic, which seeks compensation in the total amount of USD 6,592,022;

(g) Pacific Consultants International, a corporation organised under the laws of Japan, which seeks compensation in the total amount of USD 15,306;

(h) Kajima Corporation, a corporation organised under the laws of Japan, which seeks compensation in the total amount of USD 46,742;

(i) Taisei Corporation, a corporation organised under the laws of Japan, which seeks compensation in the total amount of USD 107,362;

(j) Sumitomo Construction Co. Limited, a corporation organised under the laws of Japan, which seeks compensation in the total amount of USD 41,684;

(k) ABB HV Switchgear AB, a corporation organised under the laws of the Kingdom of Sweden, which seeks compensation in the total amount of USD 169,150;

(l) Health and Scientific Construction Limited, a corporation organised under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of USD 255,985;

(m) Bechtel Group, Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 1,280,184;

(n) Howe-Baker Engineers Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 215,699;

(o) Itek Optical Systems Division, a division of Litton Systems, Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 98,972; and

(p) Energoprojekt Building and General Contracting Company Limited, a corporation organised under the laws of the Federal Republic of Yugoslavia, which seeks compensation in the total amount of USD 3,137,264.

9. These amounts claimed in United States dollars represent the alleged loss amounts after correction for applicable exchange rates as described in paragraphs 55 to 57 of the Summary.

II. LENZING AKTIENGESELLSCHAFT

10. Lenzing Aktiengesellschaft ("Lenzing") is a company existing under Austrian law, which at the time of Iraq's invasion of Kuwait, was undertaking two contracts in Iraq with the State Establishment for the Rayon Industries. Lenzing seeks compensation in the total amount of 71,736,459 Austrian schillings ("ATS") (USD 6,522,682) for contract losses, loss of profits and interest.

11. The interest element is in the amount of ATS 2,924,350 (USD 265,898). For reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Lenzing's claim for interest.

A. Contract losses

1. Facts and contentions

12. Lenzing seeks compensation in the amount of USD 1,251,328 (ATS 13,762,109) for contract losses arising out of two contracts in Iraq. Lenzing entered into a contract with the State Establishment for Rayon Industries, Hilla, Iraq, ("contract no. 1063") on 23 June 1989 for the production of a complete plant for "raschel bags including training and installations, C&F Baghdad". The contract value was ATS 190,000,000. Lenzing was to deliver machines, apparatus and materials.

13. Under the terms of contract no. 1063, Lenzing was also responsible for the supervision of the installation of the plant. The cost of the services relating to the installation was included in the total contract price.

14. According to the contract agreement, the contract came into force upon receipt by the seller of a down payment of 10 per cent of the contract price. The down payment was to be paid by 30 October 1990. An irrevocable and confirmed letter of credit for the balance of 90 per cent of the purchase price was also required before the contract came into force. Lenzing stated that it had to "issue and negotiate into the letter of credit a down payment-repayment guarantee for 10% of each invoice value". Lenzing indicated that it had performed aspects of the contract notwithstanding the fact that the down payment had not been made.

15. Lenzing entered into a second contract dated 23 June 1989 with the State Establishment for Rayon Industries Saddat Al-Hindiya, Iraq ("contract no. 1064"). The value of the contract was ATS 168,000,000. It was for the supply of a "complete plant for the production of circular woven bags including training and installation, C&F Baghdad".

16. The subject of the contract and terms for contract number 1064 were identical to contract number 1063.

17. Lenzing stated that a letter of credit for both contracts was opened on 20 December 1989. It thereafter commenced the planning and construction

work for both contracts including the placing of orders with suppliers. Lenzing asserted that it had to pay down payments to its suppliers. It commenced delivery of the items, which were the subject of the contracts in June 1990. Lenzing asserted that the invasion and occupation of Kuwait on 2 August 1990 by Iraq prevented further deliveries. Lenzing summarised its contract losses as follows:

(a) Costs for cancellation

18. The total asserted loss is ATS 1,825,779, which Lenzing stated arose out of cancellation fees that it incurred relating to the down payments that it had to forfeit for partially, or completely, manufactured goods. These down payments were amounts that Lenzing asserted that it paid to its suppliers for the manufacture of the goods. This was its suppliers' compensation for the cancellation of the order.

(b) 10 per cent down payment for already delivered goods

19. Lenzing asserted a loss of ATS 1,602,613 arising out of the refusal "due to the trade embargo" by the Austrian banks to issue a letter of guarantee in favour of the Iraqi employer. The result, asserted Lenzing, was that the 10 per cent deposits to be paid for goods delivered to the Iraqi employer were not in fact paid.

(c) Parts supplied that could not be resold

20. Lenzing seeks compensation for ATS 9,649,285 for parts purchased from suppliers which could not be delivered "due to the trade embargo" and which could not be sold elsewhere.

(d) Storage, insurance, transport costs for undelivered goods

21. Lenzing stated that it had undertaken eight partial deliveries to Iraq, and six of these deliveries had to be returned to Austria because "entry into Iraq was not possible at this time". It asserted that it incurred costs of ATS 684,432 relating to offloading, transport, storage and insurance.

2. Analysis and valuation

22. The Panel finds that the State Establishment for Rayon Industries is an Iraqi state agency. Certain elements of the work relating to both contracts were performed after 2 May 1990 and are, therefore, within the jurisdiction of the Commission.

23. Lenzing, in support of its claim, submitted copies of the contract nos. 1063 and 1064. It also submitted a number of untranslated documents. Lenzing did not, however, submit a response that specifically answered the some 70 questions raised in the article 34 notification.

(a) Costs for cancellation

24. Lenzing did not explain why its order of machinery, equipment and electro-installation material was cancelled, the date the order was cancelled, and for which contract the machinery, equipment and electro-installation material was intended to be used.

25. Lenzing did not provide evidence, in English, that it had made the down payments to each of its suppliers in respect of the cancelled orders.

(b) 10 per cent down payment for already delivered goods

26. Lenzing did not state the dates on which the eight partial deliveries of goods took place under Contract numbers 1063 and 1064.

27. Lenzing did not explain how, as contract numbers 1063 and 1064 were dated 23 June 1989, the trade embargo (which came into effect on 6 August 1990) affected the issue of a letter of guarantee by the Austrian bank. It submitted no evidence (in the form of correspondence or other relevant documents) that the Austrian bank was unwilling to issue the letter of guarantee.

(c) Parts supplied that could not be resold

28. Lenzing did not submit a schedule, in English, setting out a precise description of the parts, aggregates and machinery purchased, the unit price, the quantity purchased and the total value purchased from the suppliers. It provided no explanation as to the intended purpose of the parts, aggregates and machinery.

29. Lenzing did not explain why the parts, aggregates and machinery were unable to be sold to other customers nor did it provide evidence of its attempts to sell them. There was also no explanation as to where the parts, aggregates and machinery are located or for what purpose they are currently being used.

(d) Storage, insurance, transport costs for undelivered

30. Lenzing did not indicate the dates on which the eight partial deliveries of goods took place under Contract numbers 1063 and 1064 and the dates on which the six deliveries were returned to Austria. Nor did it submit copies of the export documents relating to storage in a warehouse of the forwarding agent.

31. Lenzing failed to submit a full description relating to costs for off-loading (August and September 1990), storage costs and transport costs (March 1992), insurance costs from April 1992 to January 1993, storage costs of goods for warehouse and energy, or documentary evidence that the costs and charges were invoiced to Lenzing and that Lenzing paid the relevant amounts.

32. Lenzing was requested to submit detailed explanations and responses to specific questions in an article 34 notification sent to it. This information was not submitted. The Panel finds that Lenzing did not provide sufficient evidence of its stated losses. Accordingly, the Panel recommends no compensation.

3. Recommendation

33. The Panel recommends no compensation for contract losses.

B. Loss of profits

34. Lenzing describes this claim as a claim for "additional costs". It would appear that these losses are more appropriately classified as a loss of profits claim as the claimed items enumerated relate specifically to items that would normally be incorporated in a loss of profits calculation. Lenzing seeks compensation in the total amount of USD 5,005,456 (ATS 55,050,000) for loss of profits. The claim includes the following:

Table 1. Lenzing's claim for loss of profits

Item	Amount ATS
Technical planning costs	11,000,000
Loss of profit contract no. 1063	19,000,000
Loss of profit contract no. 1064	16,800,000
Loss of profits (spare parts)	8,250,000
Total	55,050,000

35. Lenzing did not submit evidence to support its allegation that a profit would have been made. It did not submit information directly linked to the project which would include: audited financial statements, budgets, management accounts, turnover, original bids, profit/loss statements, finance costs and head office costs prepared by or on behalf of the Claimant for each accounting period commencing in year one of the Project and continuing through March 1993.

36. The loss of profits for the spare parts aspect is claimed for 10 years. There is no indication of the period claimed for relating to the other claimed amounts. Lenzing did not submit evidence that demonstrated that the Project proceeded as planned.

37. The Panel finds that Lenzing failed to fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

C. Summary of recommended compensation for Lenzing

38. Based on its findings regarding Lenzing's claim, the Panel recommends no compensation.

III. KONČAR ELEKTROINDUSTRIJA D.D

39. KONČAR Elektroindustrija d.d. ("Koncar") is a Croatian registered limited liability company. It supplies transformer stations and builds machinery and electrical appliances. Koncar had a presence in the Iraqi market from the beginning of the 1980s. It seeks compensation relating to nine contracts in Iraq, loss of tangible property, loss of profits and interest in the total amount of USD 8,440,131.

40. For reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Koncar's claim for interest.

A. Contract losses

41. Koncar seeks compensation in the amount of USD 6,831,000 for contract losses. The claim arises out of nine contracts that the companies "belonging to Koncar Elektroindustrija d.d Zagreb" had entered into with Iraq.

42. The payment terms for the agreements, with the exception of the contract for the North Jazira Irrigation Project, were by letter of credit. Koncar stated that all the contracts "by their method of payment were connected to the interstate agreement between the governments of the former Yugoslavia and Iraq from October 1983, which comprised a part of payment by Iraq as a deferred payment for 2 years at 6 per cent interest, and later 5.5 per cent interest and 5 per cent interest p.a. The Iraqi side only partly fulfilled such payment obligations, so that a part of Iraqi debt was every year, by annexes to the interstate agreement, postponed for further 2 years".

43. The Panel finds that all the contracts were concluded with Iraq.

44. The asserted contract losses by Koncar are as follows:

1. Scientific Research Project Agreement

45. A contract was entered into on 10 October 1988 with the Solar Energy Research Centre for the supply and testing of the solar photovoltaic power system used for the vertical drainage application in the Fudhailiya area in Baghdad. The contract documentation submitted by Koncar indicated that the agreement was entered into by "Rade Koncar Electrotechnical Institute of the S.F.R. of Yugoslavia". Delivery of the system to be used was to occur within one year of the signing of the agreement. The equipment was delivered between February and March 1990. Koncar asserted a loss of USD 242,088 including interest calculated as follows:

Table 2. Koncar's claim for contract losses on Scientific Research Project Agreement

Item	Amount USD
Value of delivered equipment	205,000
5 per cent interest p.a. on USD 165,400	30,323
5 per cent interest for USD 39,600	6,765
Total	242,088

46. According to the letter of credit dated 8 November 1988, the amount of USD 165,400 was to be paid upon shipment of goods for the value of USD 205,000 and the remaining USD 39,600 was payable after the erection, testing, and functioning of the project. A copy of a "Protocol" reflecting a meeting held in Baghdad on 7 July 1990, suggests that the amount relating to the local currency amount was payable immediately (the actual amount is not clear from a copy of the Protocol). The amount of USD 39,600 was payable after completion of testing but "not later than end of October 1990".

47. The documents submitted by Koncar reflect that three shipments took place on 15 February 1990 (value of shipment USD 20,000), 26 February 1990 (value of shipment USD 165,000) and 28 March 1990 (value of shipment USD 20,000). These three shipments totalled USD 205,000.

48. With respect to the payment for the amount of USD 165,400, the Panel finds that the claim relates to work that was performed prior to 2 May 1990 and that the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687(1991). Accordingly, the Panel does not recommend compensation.

49. With respect to the claim for the amount of USD 39,600, the Panel is satisfied that the testing of the installation which was to occur in October 1990 was prevented as a direct result of the invasion and occupation of Kuwait by Iraq on 2 August 1990. However, for the reasons stated at paragraphs 114-118, infra, (relating to the advance payment) the Panel does not recommend compensation.

2. Ministry of Industry and Minerals contract

50. In August 1988, a contract was concluded for the supply of 11 kV earthing assembly equipment to the Ministry of Industry and Minerals, State Organization on Electricity. The equipment was delivered between July and November 1989. Koncar asserted a loss, including interest, of USD 547,682.

51. The payment was in terms of letter of credit number 46/20195. It is dated in 1988 (but the exact date is unclear from the copy supplied). The payment terms are not legible from the copy supplied. In terms of the letter confirming the order, dated 16 August 1988, the payment is described as "according to prevailing agreement between Yugoslavia and Iraq with interest rate for deferred payment being 5 per cent per annum."

52. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

3. The State Enterprise for Dairy Product contract

53. A contract was concluded on 20 February 1989 with the State Enterprise for Dairy Product, Baghdad, for the supply of "H.T. equipment and cables". The equipment was delivered in May 1989. Koncar seeks compensation in the amount of USD 317,540, including interest.

54. The price for the goods was USD 256,598. In terms of the Order Confirmation that Koncar sent to the employer dated 20 February 1989, payment was to be deferred for two years from the date of shipping documents with an interest rate of 5 per cent "in accordance to Yugoslav-Iraq agreement". The letter of credit also used terminology that reflected that payment was to be in terms of the agreement between Iraq and Yugoslavia. The invoice reflecting the goods shipped is dated 24 May 1989.

55. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

4. Contract 11B Kirkuk

56. A contract was concluded with the Ministry of Irrigation, Baghdad, as the investor, and a consortium comprising Koncar, Ivan Milutinovic ("PIM") and Titovi Zavodi Litostroj. The contract is dated 4 June 1981 and was for the construction of three pumping stations. The equipment was delivered in the period December 1982 to May 1989. Koncar asserted a loss of USD 1,233,365, which included interest.

57. From Koncar's replies to the article 34 notification, it would appear that the main contractor (or general contractor as described by Koncar) on the project was PIM while Koncar was a sub-contractor. Koncar stated that it only seeks compensation for the balance of the unpaid part of the total supplies that it had made.

58. It appears that the claim also includes a claim for unpaid retention monies. Koncar acknowledged that it received an advance payment but did not state the amount or when it was paid. However, it indicated that it deducted the advance payment from its claim.

59. Koncar submitted a "Protocol" dated 11 June 1990 which it asserts it entered into with PIM. The Protocol appears to be an attempt by the two parties to reconcile differences between themselves. It is difficult to reconcile the amounts without the supporting documents relating to the interim certificates. It is apparent, however, that according to Koncar, the last monthly statement that it received was in May 1989. Koncar stated that it received the Final Maintenance Certificate, sent to PIM dated 4 October 1989. The Protocol referred to an expected payment of the second half of the retention money in August 1990.

60. In the article 34 notification, Koncar was requested to submit a copy of the main contract. It stated that it was unable to do so, as PIM was the main contractor. Koncar submitted a copy of the contract between itself and PIM dated 4 June 1981. The contract did not deal with retention amounts or the advance payments. Clause 1.3 refers to the main contract in terms of indicating that the technical aspects of the delivery and installation of the equipment should be in accordance with the main contract.

61. In the article 34 notification, Koncar was requested to submit detailed documentation. It did not submit a detailed statement of the arrangements for payment, including details of the time allowed for honouring invoices or payment certificates. Koncar did not submit evidence relating to bills of freight or lading and of the actual delivery of the equipment to Iraq. Copies of all applications for payment, approved payment certificates, interim certificates, monthly or other periodic progress reports, account invoices and actual payments received were requested. Koncar stated that it was unable to provide this information as

it indicated that it was a sub-contractor and did not possess the information.

62. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and is therefore outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). With respect to the claim for the retention money, Koncar did not submit sufficient evidence to demonstrate its entitlement thereto. Accordingly, the Panel is unable to recommend compensation.

5. Mr. Altai Contract

63. The contract was between "Radar Concar Export" and "Mr. Altai", acting as agent in respect of several Iraq entities, in terms of which Koncar would supply "break switches, circuit breakers, and relays". The contract is dated 29 September 1989, although Koncar stated that the equipment was delivered in the period from December 1989 to July 1990. Koncar asserted a loss of USD 1,093,956 relating to the unpaid value of the items delivered plus interest.

64. The basis upon which the contracts were entered into and financed in terms of the letters of credit is summarised at paragraph 42, supra. The evidence submitted by Koncar to establish its performance of its contractual obligation consists of invoices. The invoices do not specify when delivery occurred. The dates on the invoices range from 28 December 1989 to 18 July 1990. These dates are likely to reflect the period within which delivery occurred. Koncar stated that it no longer had the bills of freight or lading as, due to the lapse of time, these had been lost.

65. The dates on the letters of credit that correspond with the various invoices submitted reflect a range from 1988 to 25 June 1990. The payment terms for these letters of credit reflect a payment period in terms of the protocol signed by the Central Bank of Iraq and Jugobanka. Where the payment terms are specified, this reflects a payment period of two years from delivery.

66. The Panel finds that part of the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

67. With respect to the Mr. Altai contract, the further issue for the Panel's determination relates to those deliveries occurring after 2 May 1990 with payment to be made two years after the date of delivery. The issue is whether the asserted failure of Iraq to pay for such deliveries can be said to have arisen directly out of its invasion and occupation of

Kuwait. Koncar's agreements indicated that the final batch of equipment to be supplied was to be on 30 June 1990. Under the payment terms negotiated by Koncar, such delivery of equipment on 30 June 1990 would have triggered a payment date of 1 July 1992.

68. Kuwait was liberated on 2 March 1991 and the Panel is aware that the losses resulting from Iraq's invasion and occupation of Kuwait continued for a period of time after the liberation of Kuwait. The Panel concludes, however, that the asserted failure by Iraq in July 1992 to pay for such deliveries cannot be said to have arisen as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

6. Al Kadesiah State Establishment

69. A contract for the supply of circuit breakers and switches and contactors was concluded on 26 April 1988 with Alkadesiah State Establishment, Baghdad. The equipment was delivered in April 1988. Koncar stated that in May 1991 it was paid 50 per cent of the value of the delivered equipment. The claim to the Commission is based on the 50 per cent of the outstanding value of the delivered equipment. It asserted a total loss, including interest, of USD 39,736.

70. According to the letter of confirmation dated 26 April 1988, payment was to be "deferred payment according to Iraq-Yugoslavia agreement with interest of 5.5 per cent by opening an irrevocable L/C through Central Bank of Iraq at National Bank of Yugoslavia". The copy of the letter of credit submitted is of poor quality and it is impossible to ascertain the details.

71. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

7. Al Qaqaa State Establishment

72. The contract was concluded on 26 April 1988 with Al Qaqaa State Establishment, Baghdad, for the supply of spare parts and circuit breakers. The equipment was delivered in August 1988. Koncar stated that in May 1991 it was paid 50 per cent of the value of the delivered equipment. Its claim to the Commission is based on the 50 per cent portion of the outstanding value of the delivered equipment. It asserted a total loss, including interest, of USD 106,153.

73. According to the letter of confirmation dated 26 April 1988, payment was to be "deferred payment according to Iraq-Yugoslavia agreement with

interest of 5.5 per cent by opening an irrevocable divisable L/C through Central Bank of Iraq at National Bank of Yugoslavia". The copy of the letter of credit submitted confirms that payment will be effected according to the agreement between Iraq and Yugoslavia signed on 14 July 1987.

74. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

8. Electro Distribution Factory

75. Koncar stated that an order was confirmed on 20 October 1988 to supply the Electro Distribution Factory with isolators, contactors and switches. The equipment was supplied in the period from December 1988 to March 1989. Koncar asserted that the letters of credit were divided into two groups. It received a 50 per cent payment for the one group of letters of credit and no payment for the other. Koncar asserted a total loss, including interest, of USD 392,924.

76. According to the confirmation of order dated 20 October 1988, the payment terms were to be "two years deferred payment according to Yugoslav-Iraq agreed minutes date 3.9.88. point 4. - the banking arrangements signed between the Central Bank of Iraq and Jugobanka Beograd on January 20, 1984 shall be applicable for trade in 1988/89." The various letters of credit submitted in support of this loss element confirm this arrangement.

77. The Panel finds that the claim relates to work that was performed prior to 2 May 1990 and the amounts due under the letter of credit arrangement were deferred payments. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 68 to 77 of the Summary, the claim for unpaid deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council 687 (1991). Accordingly, the Panel is unable to recommend compensation.

9. North Jazira Irrigation Project

78. A contract was concluded on 14 November 1988 with the Ministry of Agriculture and Irrigation, State Commission for Irrigation and Reclamation Projects, Baghdad. It was for the supply of equipment and erection of pumping stations for the North Jazira Irrigation project. The value of the

79. The contract provided for the payment of an advance payment in the amount of 5 per cent of the value of the contract. Koncar did not indicate what amount it was paid. Under Article 6 of the contract, the advance payment received was to be deducted in equal proportions from the amounts of the monthly statements commencing with the second monthly statement.

80. Koncar also asserted certain losses as being tangible property which related to the North Jazira Irrigation Project. A number of these asserted losses are more appropriately classified as contract losses. The Panel accordingly reclassifies the following as contract losses:

(a) Setting up and arranging the camp site

81. Koncar seeks compensation in the amount of USD 76,849 relating to alleged payments made for setting up the North Jazira site. It asserted that it paid China State Construction Engineering Company, with whom it had contracted the setting up of the site, an advance payment of USD 5,079. Koncar asserted that it also paid China State Construction Engineering Company a part payment amounting to USD 17,219 for work performed according to an invoice dated 8 July 1990.

82. Koncar asserted that it took over a warehouse from an entity it describes as "Slovenijacesta" and paid IQD 15,000 (USD 48,133). It apparently had to transport the warehouse and alleged that it paid an Iraqi company, Ashirafa Hakim, the amounts of, IQD 5,990 and IQD 2,550 to do this. Further, there is a reference to "storage fees" and this is with respect to an alleged payment of IQD 2,000 (USD 6,417) to Alrawi and Khateeb Contr. Co. These costs appear to relate to transport charges.

83. The advance payment of the foreign currency in the contract is stated at 5 per cent of the foreign currency value of the contract and therefore amounts to USD 5,079. Koncar submitted a copy of a remittance advice in the sum of USD 5,079 dated 23 April 1990. The Panel finds that Koncar submitted sufficient evidence to demonstrate its loss. However, for the reasons stated at paragraphs 114-118, infra, the Panel recommends no compensation for the advance payment for setting up and arranging the campsite.

84. Koncar submitted an invoice dated 8 July 1990 for the asserted completed work for the foreign currency portion of the contract with China State Construction Engineering Company in the sum of USD 17,219. It did not, however, submit proof of payment of this amount. In the absence of proof of payment, the Panel recommends no compensation for this amount.

85. With respect to the "cash payments" in February and March 1990 for the purchase of the storehouse, Koncar submitted translated cashiers receipts

for the reasons stated at paragraphs 114-118, _infra_, the Panel recommends no compensation for the purchase of the store house and transport charges.

86. The charges stated to be for transport of the storehouse and containers are allegedly supported by invoices for "transporting materials". However, Koncar did not submit any evidence of actual payment to Ashirafa Hakim. Koncar did not adequately explain the "storage fees". Accordingly the Panel does not recommend an award for storage fees.

(b) Lloyd's Register of shipping

87. Koncar seeks compensation in the amount of USD 21,400 relating to inspection costs. Koncar asserted payment made to Lloyds for the inspection of the equipment apparently at the request of the purchaser. It is not entirely clear which equipment was being referred to. Koncar stated that it paid an amount of USD 21,400 relating to this inspection. In its reply to the article 34 notification, Koncar stated that in terms of the contract signed for the North Jazira Irrigation project, in the specifications to the contract, the costs of inspection were included. It is the contention of Koncar that had the invasion and occupation of Kuwait not occurred, then it "would have been paid by the purchaser within the total contract price."

88. The invoices submitted reflect an inspection that appears to have occurred between September 1989 and May 1990, although the invoices are dated later. Koncar did not submit sufficient evidence to establish what portion of the work, if any, was performed after 2 May 1990. Alternatively, even if Koncar had established that a portion of the work was performed after 2 May 1990, for the reasons outlined at paragraphs 114-118, _infra_, the Panel finds that the losses asserted for Lloyd's Register of Shipping are not compensable.

(c) Insurance premium

89. Koncar seeks compensation in the amount of USD 18,758 relating to insurance cover that it states it was obliged to effect. It appears that this insurance cover was effected relating to equipment which was to be delivered to the North Jazira Project. Koncar stated that the insurance payment was made on 21 November 1989. It is Koncar's contention that had there been no invasion and occupation of Kuwait it would have been paid by the employer as part of the contract price.

90. Koncar submitted a photocopy of an insurance policy in Arabic issued on 24 December 1989. It also submitted a copy of a telex to the bank requesting payment and a copy of a payment advice dated 21 November 1989. For the reasons stated at paragraphs 114-118, _infra_, the Panel recommends no compensation for insurance premiums. Further, the Panel finds that

(d) Equipment in warehouse

91. Koncar asserted losses relating to equipment that apparently was manufactured for the North Jazira project but was not delivered due to Iraq's invasion and occupation of Kuwait. This equipment was stored in Koncar's warehouse. It asserted losses relating to the cost of purchase of the equipment, loss of interest on the "tied up" equipment and storage charges totalling USD 2,740,549.

92. The value of the equipment was allegedly USD 2,265,760. Koncar asserted that as the equipment was of a specific nature it could not be sold elsewhere.

93. Koncar alleged that the cost of storage was for the period from 2 August 1990 to 31 March 1994. The cost of storage, it is alleged, amounted to USD 1,449 per month. It seeks compensation in the amount of USD 59,400.

94. Koncar asserted an interest claim on the tied up funds in the manufactured equipment amounting to five per cent per annum from 2 August 1990 to 31 March 1994. The asserted loss totals USD 2,265,760 (plus interest of USD 415,389). Koncar's losses are based on a 5 per cent interest rate applied to the "total value of the equipment in the warehouse, consisting of the cost of used materials and cost of labour". The basis of the claim is not clearly explained.

95. With respect to the claim for equipment in the warehouse, Koncar did not submit evidence to establish its attempts to re-sell the equipment. In addition, in its reply to the article 34 notification, it stated that it was unable to provide "proofs of paid storage". Furthermore, Koncar sought to support this claim with a number of untranslated documents. Koncar submitted internally generated documents, through which it sought to establish the existence of the equipment in its warehouse. The Panel finds that Koncar did not submit sufficient evidence explaining the basis of its claim nor did it submit sufficient documentary evidence of the asserted losses. The Panel recommends no compensation for the asserted loss of tangible property in the warehouse.

B. Loss of profits

96. Koncar seeks compensation for loss of profit in the amount of USD 1,340,000. The claim for loss of profits is based on the contract entered into for the North Jazira Irrigation Project. The contract was concluded on 14 November 1988 with the Ministry of Agriculture and Irrigation, State Commission for Irrigation and Reclamation Projects, Baghdad. It was for the supply of equipment and erection of pumping stations for the North Jazira Irrigation project. This contract was undertaken in conjunction with Litostroj, Ljubljana (of Slovenia) and Uljanik, Pula (of Croatia).

(Pula). Vodoterma (of Yugoslavia) replaced Uljanik (Pula), who withdrew from the contract. Part of the equipment that was due to be supplied by Uljanik (Pula) was to be supplied by Vodoterma and Koncar. The first deliveries were carried out from October 1989 to May 1990.

98. The overall total contract price was "ID 7,672,814 without contingencies (ID 8,209,911 with contingencies)". Koncar calculated its loss of profits claim based on its share in the contract in terms of deliveries and work it was to undertake. It asserted that the total contracted value of deliveries being IQD 4,377,340 (USD 14,046,400) less an advance payment received and partial letter of credit receipts of USD 613,622 results, according to Koncar, in a value of equipment to be delivered of USD 13,432,778. Koncar then asserted a loss of future profits based on a return of 10 per cent of the USD 13,432,778 equals "the total lost future profits of USD 1,340,000".

99. Koncar submitted copies of guarantee numbers 89/9/1388 and 89/9/1389 issued by the Central Bank of Iraq. Koncar submitted a calculation, relating to the purchase of motors for the project, which had a 10 per cent mark up. It also submitted a copy of part of the contract and the cost of equipment delivered.

100. Koncar did not submit the following types of evidence: audited financial statements, budgets, management accounts, turnover, original bids, profit/loss statements, finance costs and head office costs prepared by or on behalf of Koncar for each accounting period commencing in year one of the project and continuing through March 1993.

101. The Panel finds that Koncar failed to fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

C. Loss of tangible property

102. Koncar seeks compensation in the amount of USD 269,131 for loss of tangible property. A number of the asserted losses have been reclassified by the Panel as they are more appropriately considered under contract losses.

(a) Motor vehicles

103. Koncar asserted losses relating to the purchase of five motor vehicles valued at KWD 30,860 (USD 103,631) which remained at the project site and could not be shipped out due to Iraq's invasion and occupation of Kuwait. Koncar contends that under the terms of the bill of quantities that it signed with the employer, it was required to procure four motor vehicles at its own expense. These motor vehicles were to be used by the resident engineer's office on the project site. The total asserted losses

104. With respect to the claim for the five motor vehicles, Koncar submitted evidence of the requirements to supply four of the vehicles under the contract, through extracts of the contract. Koncar also submitted documentary evidence which demonstrated that the five vehicles were in Iraq prior to 2 August 1990 and that it paid for the motor vehicles. The Panel finds that Koncar submitted sufficient evidence to demonstrate its loss relating to the five motor vehicles. However, for the reasons stated at paragraphs 114-118, supra, the Panel recommends no compensation.

105. The Panel recommends no compensation for the claim for the losses relating to the insurance on the motor vehicles as Koncar did not demonstrate how these asserted losses arose directly out of Iraq's invasion and occupation of Kuwait.

(b) Camp for North Jazira site

106. Koncar stated that it had the responsibility to organise the North Jazira camp in Iraq, which included furnishing it for the temporary stay of workers at the site. Koncar asserted that it temporarily supplied equipment to the North Jazira site which it valued at USD 91,353. It stated that the equipment, which consisted of 36 caravans plus roofing structures and three generators, was shipped to the site in Iraq in June and July 1990. Koncar asserted that this equipment "after the war it [this equipment] could not be withdrawn from Iraq".

107. In its reply to the article 34 notification, Koncar indicated that:

> "The site camp had to be organised and furnished by the main contractor. There was no provision that the purchaser should pay the camp equipment directly, but the cost of camp was included in the contract price of equipment and erection for Rade Koncar. If all the equipment had been supplied and paid, the claimant would have, within the frame of total payment by the purchaser, collected payment also for the camp equipment."

108. Koncar put forward evidence of the contract, parts of the bills of quantities, and copies of invoices for the equipment delivered in May 1990 and June 1990. It also submitted supporting documentation which indicated that equipment to the value of USD 70,748 was delivered to Iraq. The Panel finds that Koncar submitted sufficient evidence to demonstrate its loss relating to the equipment. However, for the reasons stated at paragraphs 114-118, supra, the Panel recommends no compensation for camp equipment.

(c) Insurance and transport

109. Koncar asserts a loss in the amount of USD 3,940 relating to the insurance it allegedly paid on the transportation of equipment relating to

110. Koncar also seeks compensation in the amount of USD 69,207 for the cost of transporting the camp equipment to Iraq. In its reply to the article 34 notification, Koncar indicated that there was no special provision "that the purchaser should pay directly the costs of transport of camp equipment, but the total value of camp furnishing (including delivery of equipment for the camp and transport of the equipment) was included in the contract price of equipment and works with the Iraqi purchaser."

111. It is Koncar's contention that had Iraq's invasion and occupation of Kuwait not occurred it would have delivered all the equipment and would have received payment of "all expenses".

112. Koncar submitted calculations on the basis of the insurance premium stated in the copies of the insurance policies that were submitted as proof of its losses relating to insurance premiums. Koncar did not submit copies of the payment of the claimed amount of USD 3,940. The Panel finds that Koncar did not submit sufficient evidence of its loss.

113. With respect to the transport claim, Koncar submitted forwarding agent's invoices but they are not summarised or totalled. Translations of the typical forms/invoices are provided but the currency details, in some translations, are not adequately explained. The charges appear to be in differing currencies and are not cross-referenced to the deliveries of specific goods for the camp. The Panel finds that Koncar did not submit sufficient evidence and explanations to demonstrate its loss.

(d) Advance payment for North Jazira Project

114. It was clear that the advance payment relating to the North Jazira Project was in a substantial amount. Indeed, it may have been as much as USD 1,058,596 relating to the foreign currency portion and IQD 73,745.700 relating to the local currency portion of the contract. Clarification was sought in an article 34 notification and Koncar did not give a precise answer.

115. It is the contention of Koncar that had Iraq's invasion and occupation of Kuwait not occurred, then it "would have been paid by the purchaser within the total contract price". On the assumption that the claims relating to the Scientific Research Project, the cost of the advance payment it paid to China State Construction Engineering Company, the purchase of storehouse, the transport of storehouse, the motorvehicles and the camp for North Jazira are valid and recoverable in the full amounts, Koncar is still left with a net surplus. This is the result of the substantial advance payments paid to it in respect of the North Jazira Project.

116. In terms of the contract, Koncar was to repay Iraq these advance

taking into account the amounts owed by Iraq to Koncar referred to in paragraph 115, supra, Koncar retained a net surplus.

117. The Panel finds that the advance payments would, for the main part, have been used by Koncar to purchase tangible assets to be used on the project. In the circumstances, and applying the approach taken with respect to advance payments set out in paragraphs 64 to 67 of the Summary, there is no loss to Koncar for which the Panel can recommend compensation.

118. Further, it is the case that Koncar alleges that it did not submit a claim for other contract losses relating to this claim on the grounds that the advance payment adequately covered its losses. However, Koncar did not spell out what these losses were so as to enable the Panel to establish their validity and the extent to which they exhausted the advance payment. Accordingly, in the absence of detail relating to such asserted contract losses and the advance payment, the Panel is unable to recommend any compensation relating to contract losses for the project.

D. Summary of recommended compensation for Koncar

119. Based on its findings regarding Koncar's claim, the Panel recommends no compensation.

IV. STADLER & SCHAAF OHG

120. Stadler & Schaaf OHG ("Stadler") is a German company which was undertaking work in Iraq at the time of Iraq's invasion and occupation of Kuwait. It seeks compensation in the amount of 31,326 Deutsche Marks ("DEM") (USD 20,055) arising out of its employee's alleged detention in Iraq. The amount claimed appears to cover the period from 6 July 1990 to 25 November 1990.

121. On 24 March 1999, Stadler was sent an article 15 notification requesting it to comply with the formal requirements for filing a claim. Stadler was requested to reply on or before 24 September 1999. Stadler did not submit a reply. On 4 October 1999, Stadler was sent a formal article 15 notification. The deadline for Stadler to reply was 6 December 1999. Stadler did not reply to the article 15 notification.

122. On 29 September 1999, Stadler was sent an article 34 notification requesting it to furnish further evidence to develop its claim. Stadler was requested to reply on or before 29 December 1999. Stadler did not submit a reply. On 17 January 2000, Stadler was sent a reminder to the article 34 notification. The deadline for Stadler to reply was 31 January 2000. Stadler did not reply to the article 34 notification.

123. The Panel finds that Stadler did not submit sufficient information or documentation to support its losses.

124. The Panel recommends no compensation.

V. KRUPP INDUSTRIETECHNIK GMBH

125. Krupp Industrietechnik GmbH ("Krupp") is a company incorporated according to German law. Krupp seeks compensation in the amount of DEM 144,908 (USD 92,771) for payment or relief to others.

A. Payment or relief to others

1. Facts and contentions

126. Krupp seeks compensation in the amount of DEM 144,908 (USD 92,771) for payment or relief to others. In 1981 it had entered into a contract with the Government of Iraq to construct a National Astronomical Observatory on Mount Korek. Krupp stated that at the time of Iraq's invasion of Kuwait, it was still negotiating with the Iraqi authorities relating to additional costs for the contract. It continued to maintain an office in Baghdad. On 5 July 1990, it asserted that it sent an employee, who was based in Germany, to prepare the final negotiation and liquidation of the office in Iraq.

127. Krupp stated that after the invasion and occupation of Kuwait, its employee was unable to continue to perform the services for which he was assigned nor was he able to leave the country as it appears he had been refused permission to depart. Eventually, on 22 November 1990, its employee returned from Baghdad via Basel, Switzerland, to Düsseldorf.

128. Krupp indicated that its employee, upon his return, went on "recreation leave" until 31 December 1990.

129. Krupp calculated its loss as follows:

(a) Payments for "compulsory stay" in Baghdad from 2 August to 22 November 1990

Salary, daily allowance and site allowance	DEM 74,144
Supplementary costs on salaries	DEM 20,944
Overhead due to maintenance of general services	DEM 9,632
Total	DEM 104,720

(b) "Recreation leave" from 23 November 1990 to 31 December 1990

Salary, daily allowance plus site allowance	DEM 25,156
Supplementary costs on salaries	DEM 6,764
Overhead due to maintenance of general services	DEM 3,268
Premium to organise leave	DEM 5,000
Total	DEM 40,188

providing that "the salary shall in case of an internment be continued to be paid." Krupp asserted that this was also an obligation under German labour law.

131. With respect to the payments, including the "premium" of DEM 5,000 for the "recreation leave" from 23 November to 31 December 1990, Krupp asserted that this follows from its "obligations as an employer to care for the welfare" of its employees. Krupp also cited German labour law, but did not submit English copies of the asserted legal provisions.

132. The "supplementary costs" relate to the payment of workman's compensation, pension, and unemployment insurance. Krupp stated that these payments were obligatory under the terms of the contract that it had with the employee and under German law.

133. Krupp asserted that the "general services" were amounts it had to expend on management of the company and administration. These appear to be head office type expenses.

2. Analysis and valuation

134. Krupp submitted a partially translated copy of the contract signed by its employee on 4 July 1990. It also submitted copies of airline tickets relating to its employee's travel to and from Iraq. Krupp submitted a partially translated "monthly certificate on salary for the months of August 1990 to December 1990." It did not submit a copy of its employee's Iraqi residency permit number and passport number with issuing country.

135. Krupp submitted untranslated or partially translated documents. Invoices and receipts of the expenses incurred by the Krupp were not submitted.

136. With respect to the claim for "Payments for compulsory stay in Baghdad from 2 August 1990 to 22 November 1990" the Panel finds that the salary, daily allowance and site allowance are compensable in principle. The Panel finds that the partially translated contract and monthly certificate on salary for the months of August to December 1990 demonstrated Krupp's entitlement to compensation in the amount of DEM 43,605 (USD 27,916).

137. With respect to the claim relating to "supplementary costs on salaries", "overhead due to maintenance of general services", and "recreation leave" the Panel recommends no compensation on the basis that Krupp did not submit sufficient evidence as to loss and causation.

3. Recommendation

138. The Panel recommends compensation in the amount of USD 27,916 for

B. Summary of recommended compensation for Krupp

139. Based on its findings regarding Krupp's claim, the Panel recommends compensation in the amount of USD 27,916. The Panel finds the date of loss to be 2 August 1990.

VI. UNITECH LIMITED

140. Unitech Limited, ("Unitech") is an Indian registered company, which was awarded the contract for the construction of "Head Quarter Building for Arab Town", Kuwait. The contract was for a fixed price of KWD 1,159,318. Unitech stated that the site was established on 20 April 1990 and that it "mobilised" three engineers from 1 May 1990 and had to "demobilise" them on 31 July 1990. It seeks compensation for the total amount of 451,000 Indian Rupees (INR)(USD 25,000) for travel costs, bank guarantee charges, and salaries.

141. On 24 March 1999, Unitech was sent an article 15 notification requesting it to comply with the formal requirements for filing a claim. Unitech was requested to reply on or before 24 September 1999. Unitech did not submit a reply. On 4 October 1999, Unitech was sent a formal article 15 notification. The deadline for Unitech to reply was 6 December 1999. Unitech did not reply to the formal article 15 notification.

142. On 29 September 1999, Unitech was sent an article 34 notification requesting it to furnish further evidence to develop its claim. Unitech was requested to reply on or before 29 December 1999. Unitech did not submit a reply. On 17 January 2000, Unitech was sent a reminder article 34 notification. The deadline for Unitech to reply was 31 January 2000. Unitech did not reply to the article 34 notification.

143. The Panel finds that Unitech did not submit sufficient information or documentation to support its losses.

144. The Panel recommends no compensation.

VII. ICOMSA ENGINEERING COSTRUZIONI E IMPIANTI S.P.A.

145. Icomsa Engineering Costruzioni e Impianti S.p.A. ("Icomsa") is an Italian registered, limited liability company. It had operated in Iraq since 1981 on a number of "turnkey" projects in the fields of steel carpentry, polyurethanic panels for civil prefabrication and steel frames. At the time of Iraq's invasion of Kuwait, Icomsa was engaged in a number of projects in Iraq. It seeks compensation in the total amount of 9,228,833,000 Italian lira ("ITL") (USD 6,592,022) for contract losses, loss of profits, payment or relief to others and financial losses.

A. Contract Losses

(a) NASSR contract (contract with an Iraqi party)

146. Icomsa did not submit a copy of the contract or adequate translations of documents relating to this alleged loss. Icomsa did not respond at all to the article 34 notification. It appears, from the documentation submitted, that Icomsa seeks compensation for ITL 25,814,000 (USD 18,438) relating to payments due under a contract for "supplies and works" with NASSR Enterprise for Mechanical Industries, Baghdad. The contract related to the "restoration of the polyurethanic panels production line". Icomsa asserted that after it completed the works on the contract, it sought to test the connected items, but was unable to do so. The reasons for this are not clear.

147. The Panel finds that the contract was with Iraq.

148. With respect to the NASSR contract, Icomsa submitted copies of correspondence with the Central Bank of Iraq. It did not submit the contracts together with any approved variations or the contract conditions (both general and particular), nor applications for payment, approved payment certificates, interim certificates, progress reports, account invoices, actual payments received or dates of performance.

149. The Panel finds that Icomsa did not submit sufficient evidence of its asserted losses. Accordingly, the Panel recommends no compensation for contract losses allegedly incurred under the NASSR contract.

(b) Danieli S.p.A. (contract with non-Iraqi party)

150. Icomsa seeks compensation for "commercial co-operation" and for "engineering" totalling ITL 5,961,043,000 (USD 4,257,888). On the category "E" claim form Icomsa described its claim as "fee", however, the Panel has reclassified it as a contract loss.

151. Icomsa stated that it had entered into an agreement to supply design work and it also had a commercial co-operation arrangement with an Italian company, Danieli S.p.A. ("Danieli"). Using its local Iraqi knowledge, Icomsa facilitated the acquisition by Danieli of two orders in Iraq.

Danieli acquired the orders in 1988. They related to a rolling mill in Baghdad and a steel plant in Basrah. Icomsa asserted that it did the designs relating to these two orders and that these amounts remain unpaid by Danieli. On 27 December 1991, Icomsa served a writ on Danieli in an Italian court in which it sought to recover the amounts in question.

152. With respect to the Danieli contract, Icomsa submitted a copy of the court writ. It did not submit the contracts together with approved variations or the contract conditions (both general and particular), applications for payment, approved payment certificates, interim certificates, progress reports, account invoices, actual payments received or dates of performance.

153. Furthermore, the Panel finds that Icomsa did not demonstrate how the asserted losses arose directly out of Iraq's invasion and occupation of Kuwait.

154. The Panel recommends no compensation for contract losses allegedly incurred under the contract with Danieli.

B. Loss of profits

1. Facts and contentions

155. Icomsa submitted what appear to be three loss of profits claims identified as follows:

(a) "Contracts acquired but not realised";

(b) "Failure of acquisition of contracts in negotiation"; and

(c) "Damages for Iraqi Market closing".

(a) "Contracts acquired but not realised"

156. On the category "E" claim form, Icomsa describes its claim as a loss arising in the course of "business transaction or course of dealing". The Panel has reclassified this as a claim for loss of profits. Icomsa seeks compensation for loss of profits totalling ITL 16,950,000 (USD 12,107) arising out of contracts that it asserted were accepted by NASSR but could not be carried out. It has taken the total value of the contracts, which it asserted as amounting to ITL 169,504,000, and calculated the loss of profits based upon 10 per cent of that amount. The asserted loss of profit is stated at ITL 16,950,000.

(b) "Failure of acquisition of contracts in negotiation"

157. This claim is based on the contracts that Icomsa was allegedly negotiating with various Iraqi parties. It based its calculation of its loss of profits on the total value of the contracts it was negotiating, which it asserted as ITL 115,099,419,000. Icomsa, asserted that it would have had an "acquisition probability of 20 per cent". To the resulting amount it applies a contractual discount of five per cent which amounts to ITL 21,868,990,000. Icomsa then calculated a loss of profits of 10 per cent based on ITL 21,868,990,000 which totalled an asserted loss of profits of ITL 2,186,899,000 (USD 1,562,070).

(c) "Damages for Iraqi Market closing ('loss of goodwill')"

158. Icomsa seeks compensation in the amount of ITL 1 billion (USD 714,285) relating to "loss of goodwill" arising out of the closure of the Iraqi market from August 1992 up to "all 1993". The claim is based on what Icomsa asserted was its inability to realise its turnover of ITL 10 billion and a loss of profits based on 10 per cent of that turnover.

2. Analysis and valuation

159. With respect to its claim for "Contracts acquired but not realised", Icomsa submitted copies of letters of credits, copies of correspondence and other untranslated documents. There is no evidence either initially submitted or in response to the article 34 notification that any of the contracts were accepted by NASSR.

160. In addition, there is no evidence that demonstrates that the projects proceeded. Such evidence could have included monthly/periodic reports, planned/actual time schedules, interim certificates or account invoices, details of work completed but not invoiced, by Icomsa, details of payments made by the employer and evidence of retention amounts that were recovered by Icomsa. Icomsa did not provide such evidence.

161. As evidence of its loss of profits relating to the "Failure of acquisition of contracts in negotiation", Icomsa submitted copies of various bids made. As evidence for losses relating to "Damages for Iraqi Market closing", Icomsa submitted a copy of its turnover for 1981 to 1990.

162. The costs incurred by a contractor in making unsuccessful bids will nearly always be to the contractor's account. In addition, there is no evidence relating to audited financial statements, budgets, management accounts, turnover, original bids, profit/loss statements, finance costs and head office costs prepared by or on behalf of Icomsa for each accounting period commencing in year one of the Projects and continuing through March 1993.

163. The Panel finds that Icomsa failed to fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 125 to 134 of the Summary. Accordingly, the Panel recommends no compensation.

3. Recommendation

164. The Panel recommends no compensation for loss of profits.

C. Payment or relief to others

165. Icomsa seeks compensation in the amount of ITL 36,288,000 (USD 25,920). It asserted that this was the cost of supporting its member of staff allegedly detained in Iraq from 2 August to 10 November 1990. The compensation sought relates to "salaries and other contributions." Icomsa did not submit detailed supporting evidence relating to this claim.

166. The following information about its employee was not submitted: family name, first name, employee identification number, Iraqi residency permit number, and passport number with issuing country. Copies of Icomsa's payroll records for the employee for the period relevant to the Claim were also not provided.

167. Invoices and receipts of the expenses allegedly incurred by Icomsa were not submitted.

168. The Panel finds that Icomsa did not submit sufficient evidence of its alleged losses. Accordingly, the Panel recommends no compensation.

D. Financial losses bank guarantees

169. Icomsa seeks compensation for ITL 1,839,000 (USD 1,314) for bank guarantees for what Icomsa describes as "costs supported unnecessarily". These costs related to "contracts in negotiation and supported".

170. Icomsa does not submit any argument as to why this loss is causally connected to Iraq's invasion and occupation of Kuwait. Icomsa submitted untranslated documentation in support of its claim.

171. The Panel recommends no compensation for financial losses as Icomsa did not submit sufficient evidence to establish a loss.

E. Summary of recommended compensation for Icomsa

172. Based on its findings regarding Icomsa's claim, the Panel recommends no compensation.

VIII. PACIFIC CONSULTANTS INTERNATIONAL

173. Pacific Consultants International ("Pacific") is a Japanese registered legal entity specialising in consulting services relating to civil construction works. Pursuant to an agreement dated 18 January 1990, it was engaged as an independent engineer for the dredging of the Um-Qusr Area in Iraq by both the General Establishment of Iraqi Port (Basrah) and the joint venture formed by Boskalis International BV and Volker Stevin Dredging.

174. It seeks compensation in the amount of Yen ("JPY") 2,207,861 (USD 15,306) for payment or relief to others.

175. On 24 March 1999, Pacific was sent an article 15 notification requesting it to comply with the formal requirements for filing a claim. Pacific was requested to reply on or before 24 September 1999. Pacific did not submit a reply. On 4 October 1999, Pacific was sent a formal article 15 notification. The deadline for Pacific to reply was 6 December 1999. Pacific did not reply to the formal article 15 notification.

176. On 29 September 1999, Pacific was sent an article 34 notification requesting it to furnish further evidence to develop its claim. Pacific was requested to reply on or before 29 December 1999. Pacific did not submit a reply. On 17 January 2000, Pacific was sent a reminder article 34 notification. The deadline for Pacific to reply was 31 January 2000. Pacific did not reply to the article 34 notification.

177. The Panel finds that Pacific did not submit sufficient information or documentation to support its losses.

178. The Panel recommends no compensation.

IX. KAJIMA CORPORATION

179. Kajima Corporation ("Kajima") is a Japanese limited liability company. According to Kajima's registration documents, it provides "contracting and undertaking of civil engineering, architecture, machinery and equipment and other construction works in general". Kajima seeks compensation in the amount of JPY 6,742,602 (USD 46,742) for payment or relief to others and pre-paid rent relating to its office in Baghdad.

A. Payment or relief to others

1. Facts and contentions

180. Kajima seeks compensation in the amount of JPY 4,942,602 (USD 34,264) for payment or relief to others. It asserts that it evacuated three employees, two Filipino citizens and one Japanese citizen from Iraq. Kajima stated that the two Filipino citizens returned to the Philippines by air on 30 August 1990 from Baghdad via Amman and Bangkok to Manila. The Japanese national was allegedly evacuated on 6 November 1990 on a plane chartered by the Government of Japan. Kajima seeks compensation for expenses, relating to its Japanese employee, including salary, social insurance, bonus, retirement allowances, accommodation on arrival and a medical check up. With respect to its Filipino employees, Kajima claims for expenses relating to war risk insurance and air tickets.

2. Analysis and valuation.

181. Kajima was only able to provide the name of one of its employees. The following information about each employee was not submitted: family name, first name, employee identification number, Iraqi residency permit number, and passport number with issuing country. Kajima did not provide copies of its payroll records for the employees for the period relevant to the claim. Kajima did not explain why it was unable to submit the documentation. In its reply to the article 34 notification, it merely indicated that the information was "not available".

182. Kajima submitted copies of untranslated documents. Kajima did not submit evidence detailing who would be responsible for the costs of airfares upon natural completion of the contract.

183. The Panel finds that Kajima did not submit sufficient evidence of its asserted losses relating to payment or relief to others.

3. Recommendation

184. The Panel recommends no compensation for payment or relief to others.

B. Financial losses (prepaid rent)

185. Kajima seeks compensation for rent paid in respect of its Baghdad office for the period from 2 August 1990 to 6 November 1990 totalling JPY 1,800,000 (USD 12,478). It did not provide sufficient detail relating to the claim. Kajima did not establish how the asserted loss was causally connected to Iraq's invasion and occupation of Kuwait. Kajima stated that it was unable to provide a copy of the lease agreement as this was left in Baghdad. For the same reason, it was unable to submit rental receipts.

186. The Panel finds that Kajima did not submit any evidence of its loss and how the asserted losses arose directly out of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for financial losses.

C. Summary of recommended compensation for Kajima

187. Based on its findings regarding Kajima's claim, the Panel recommends no compensation.

X. TAISEI CORPORATION

188. Taisei Corporation ("Taisei") is a Japanese registered corporation, which engages in planning, surveying, designing, supervising, construction, engineering and consulting relating to building, civil engineering, plant installation and other construction works. It was engaged in projects in Kuwait and Iraq at the time of Iraq's invasion and occupation of Kuwait. Taisei seeks compensation in the total amount of USD 107,362 for tangible property losses, payment or relief to others and loss of cash.

A. Loss of tangible property

189. Taisei seeks compensation in the amount of JPY 601,064 (USD 4,167) for loss of tangible property kept at its office in Kuwait. Taisei asserted that the invasion and "robbery" by the Iraqi military forces resulted in its office supplies being stolen. In support of its claim, Taisei submitted an extract from an "office supplies record" dated February 1991, and a certificate from its landlord that the office was "well furnished". Taisei also submitted photographs of the office in Kuwait.

190. Taisei did not provide evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

191. The Panel finds that Taisei did not submit sufficient evidence that it owned the tangible property and that such property was in Kuwait on 2 August 1990. Accordingly, the Panel recommends no compensation for loss of tangible property.

B. Payment or relief to others

1. Facts and contentions

192. Taisei seeks compensation in the amount of USD 47,306 for payment or relief to others arising out of the evacuation of one staff member from Kuwait and 24 staff members from Iraq.

(a) Evacuation from Kuwait

193. Taisei had one member of staff in Kuwait at the time of Iraq's invasion and occupation of Kuwait on 2 August 1990. The staff member managed to escape from Kuwait to his hometown, Cochin, India. The employee departed Kuwait for Baghdad on 2 September 1990, then travelled via Amman, Jordan, en route to Bombay, India. The employee arrived in India on 12 September 1990. Taisei asserted that it incurred costs relating to airfares, hotel costs in Amman and salary payments made to its employee from 2 August to 12 September 1990.

(b) Evacuation from Iraq

194. Taisei seeks compensation for the evacuation of its seven Japanese and 17 Filipino employees from Baghdad, Iraq. It also seeks compensation for the cost of two of its employees who were involved in organising the repatriation of its staff.

195. The Filipino employees were flown from Baghdad to Amman on 18 August 1990. They stayed in Amman from 18 August 1990 to 20 August 1990. On 20 August 1990 they were flown to Bahrain and then flew to Manila on 21 August 1990.

196. Taisei stated that a member of its head office staff left Japan for Amman on 17 August 1990 to arrange the hotel reservations for, and hand over airline tickets, to the Filipino employees. He stayed in Amman from 18 to 22 August 1990, when he then left Amman for London to discuss, with staff of the Taisei London office, the fate of the seven Japanese employees who were still in Baghdad. He stayed in London from 22 to 24 August 1990 whereupon he returned to Japan. Taisei seeks compensation for the costs of this employee's journey.

197. Another head office employee of Taisei left Japan for Amman on 11 October 1990 to "receive" the seven Japanese employees. He was in Amman from 12 to 15 October 1990, but the employees were not released so he departed Amman on 15 October 1990. Taisei seeks compensation for these costs.

198. On 7 November 1990, two of the Japanese employees departed Iraq for Japan on a flight arranged by the Government of Japan. The remainder of the employees departed Iraq for Bangkok on a flight arranged by the Government of Iraq, and from Bangkok to Japan on a flight arranged by the Government of Japan.

2. Analysis and valuation

199. Taisei submitted various documents and receipts relating to the costs of evacuating its employees.

200. In the article 34 notification, Taisei was asked to explain how the evacuation costs exceeded the costs that it would normally have incurred upon natural completion of its work in Iraq or Kuwait. In its response, Taisei stated that with respect to its employee in Kuwait, upon natural completion of the work, he would have taken a direct flight to India. It adds, "yet according to emergency situations there was no choice but to take a flight via Amman. Making the hotel fee and travel expense to Amman totally additional." The same explanation was given relating to the Filipino employees. According to Taisei, they would not have had to go via Amman, but would have been transported directly to Manila.

201. Taisei was requested in an article 34 notification to provide evidence of who was responsible for the costs of repatriating employees upon natural completion of the contract in Iraq or Kuwait. In its reply, Taisei indicated that the documentation was destroyed when the offices were ransacked. Accordingly, there were no contracts submitted to demonstrate who would have borne this responsibility.

202. The Panel finds that the evidence submitted by Taisei, relating to its evacuation of its employees from Kuwait and Iraq, demonstrated that the cost of travel of its staff members to Amman, Jordan, was a temporary and extraordinary expense and is therefore compensable. Taisei submitted evidence to establish its entitlement to the amount of USD 323. With respect to the cost of travel to India (including to Cochin) and to Manila, this has not been demonstrated by Taisei to be temporary and extraordinary expenses. Accordingly, the Panel recommends no compensation.

203. With respect to the asserted salary payments made to its employee in Kuwait, Taisei did not submit proof of payment of the salary. Accordingly, the Panel recommends no compensation.

204. With respect to the claim by Taisei relating to travel costs for head quarters staff in travelling to render assistance to employees in Kuwait and Iraq, the Panel finds that the costs were temporary and extraordinary and are therefore compensable in principle. Taisei submitted evidence which demonstrated its entitlement to USD 15,619.

3. Recommendation

205. The Panel recommends compensation in the amount of USD 15,942.

C. Financial losses

206. Taisei seeks compensation in the amount of 16,152 Kuwaiti dinars ("KWD") (USD 55,889) for loss of cash in a safe in Kuwait. Taisei asserts that Iraq's invasion and occupation of Kuwait and "robbery" caused by the Iraqi military forces resulted in its cash being stolen.

207. Taisei submitted photographs of a cash box and an extract from its cashbook as evidence to support its claim.

208. The Panel finds that Taisei did not produce sufficient evidence of the existence of the cash in the safe. The Panel also notes that Taisei's employee, who was based in Kuwait at the time of the invasion, did not make mention of the cash in the safe in his statement. Accordingly, the Panel recommends no compensation.

D. Summary of recommended compensation for Taisei

209. Based on its findings regarding Taisei's claim, the Panel recommends compensation in the amount of USD 15,942. The Panel finds the date of loss to be 2 August 1990.

XI. SUMITOMO CONSTRUCTION CO. LTD

210. Sumitomo Construction Co. Ltd. ("Sumitomo") is a limited liability company specialising in "design and execution for general civil engineering, construction works and prestressed concrete products". At the time of Iraq's invasion and occupation of Kuwait, Sumitomo was involved in building maintenance work for the ArabSat Satellite project, located about 30 kilometres from Baghdad. Sumitomo seeks compensation in the total amount of JPY 6,013,026 (USD 41,684) for loss of tangible property and payment or relief to others.

A. Loss of tangible property

211. Sumitomo seeks compensation in the amount of JPY 3,905,495 (USD 27,074) for loss of tangible property.

212. Sumitomo did not clearly state whether the assets in question were lost as a result of it evacuating its employees from Iraq or confiscation by the Iraqi authorities. It submitted a copy of a letter from the Iraqi General Establishment for Communications and Posts dated 23 December 1992, which lists a "monitor and printer" and a photocopying machine as having being "handed over". Sumitomo also submitted copies of letters relating to the "handing over" of a vehicle Toyota Number 8774 to the "FAO General Establishment Committee". The exact date of "hand over" is not clear. Two other vehicles, Toyota Number 8772 and Toyota Number 8771 were "handed over" on 7 December 1992 and 29 September 1992 respectively.

213. The Panel finds that the evidence submitted by Sumitomo establishes that the items in question were confiscated by Iraq. Applying the approach, that this Panel has developed, with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 146 of the Summary, the Panel recommends no compensation.

B. Payment or relief to others

1. Facts and contentions

214. Sumitomo seeks compensation in the amount of JPY 2,107,531 (USD 14,610) relating to the costs of evacuating its employees and, in certain cases, their families from Iraq. From the evidence submitted, it would appear that Sumitomo evacuated six employees plus the spouse and child of one of its employees, which resulted in a total number of eight evacuees. The claimed amount relates to air tickets, hotel charges, meals and airport taxes and the cost of bus transport from Baghdad to Amman.

215. The exact evacuation dates are unclear, but the submitted invoices and an affidavit from the General Manager of Sumitomo reflect that this is likely to have occurred between 16 and 23 August 1990. The affidavit of the General Manager also indicated that the Indian employees and two family

members were evacuated from Amman to India, while the Filipino employees travelled from Amman to the Philippines via Bangkok.

2. Analysis and valuation

216. Sumitomo provided copies of invoices for airline tickets, hotel invoices, invoices for taxes and visas.

217. In the article 34 notification, Sumitomo was asked to explain how the evacuation costs exceeded the costs that it would normally have incurred upon natural completion of work in Iraq. It stated that "[w]e find this item impossible to calculate".

218. Sumitomo was further requested in the article 34 notification to provide evidence of who was responsible for the costs of repatriating employees upon natural completion of the contract in Iraq. In its reply, Sumitomo indicated that the question was "[n]ot applicable to this claim". Sumitomo submitted no documents to demonstrate who would have borne this responsibility.

219. The Panel finds that it is only the costs relating to the travel to Amman, Jordan, which Sumitomo established as being temporary and extraordinary. Accordingly, the Panel recommends compensation of USD 1,634 for expenses proven by Sumitomo that it incurred relating to the cost of the Amman journey.

3. Recommendation

220. The Panel recommends USD 1,634 for payment or relief to others.

C. Summary of recommended compensation for Sumitomo

221. Based on its findings regarding Sumitomo's claim, the Panel recommends compensation in the amount of USD 1,634. The Panel finds the date of loss to be 2 August 1990.

XII. ABB HV SWITCHGEAR AB

222. ABB HV Switchgear AB ("ABB Switchgear") is a Swedish registered company which describes itself as a wholly owned subsidiary of Asea Brown Boveri AB, Sweden. ABB Switchgear seeks compensation for the total amount of 973,800 Swedish krona ("SEK") (USD 169,150) for payment or relief to others. It asserts that three of its employees were detained in Iraq for the period 2 August to 10 December 1990.

223. On 24 March 1999, ABB Switchgear was sent an article 15 notification requesting it to comply with the formal requirements for filing a claim. ABB Switchgear was requested to reply on or before 24 September 1999. ABB Switchgear did not submit a reply. On 4 October 1999, ABB was sent a formal article 15 notification. The deadline for ABB Switchgear to reply was 6 December 1999. ABB Switchgear did not reply to the formal article 15 notification.

224. On 29 September 1999, ABB Switchgear was sent an article 34 notification requesting it to furnish further evidence to develop its claim. ABB Switchgear was requested to reply on or before 29 December 1999. ABB Switchgear did not submit a reply. On 17 January 2000, ABB Switchgear was sent a reminder article 34 notification. The deadline for ABB Switchgear to reply was 31 January 2000. ABB Switchgear did not reply to the reminder article 34 notification.

225. The Panel finds that ABB Switchgear did not submit sufficient information or documentation to support its losses.

226. The Panel recommends no compensation.

XIII. HEALTH AND SCIENTIFIC CONSTRUCTION LIMITED

227. Health and Scientific Construction Limited ("HSC") is a United Kingdom registered limited liability entity. It was engaged in a building contract in Iraq at the Kadhimiya Teaching Hospital (Saddam College) in Baghdad at the time of Iraq's invasion of Kuwait.

228. HSC seeks compensation in the total amount of 134,648 Pounds sterling ("GBP")(USD 255,985) for loss of tangible property and payment or relief to others.

A. Loss of tangible property

1. Facts and contentions

229. HSC seeks compensation in the amount of GBP 8,730 (USD 16,597) for loss of tangible property. It was engaged in a building contract in Iraq at the Kadhimiya Teaching Hospital (Saddam College) in Baghdad. Under the contract, HSC was to supply modular operating theatres. The agreed price was GBP 730,678.

230. The contract was almost completed at the time of Iraq's invasion and occupation of Kuwait. HSC asserted its tangible property losses as "tools and equipment that could not be exported".

2. Analysis and valuation

231. In support of its claim, HSC submitted various faxes from HSC detailing items for temporary import, a shipping note for "Temporary Lifting Gear", a copy Order dated 31 May 1990 from Shanning International Limited, which was the main contractor, and a copy of a Lloyd's documentary extension of credit note.

232. Further details and evidence relating to the claimed loss were sought from HSC in an article 34 notification. This included evidence that each of the items claimed was located in Iraq as at 2 August 1990 and that the HSC continued to own each item at that time.

233. The only item where a link has been established with a confirming shipping note relates to the "temporary lifting gear". The Panel accordingly recommends compensation, taking into account depreciation, in the amount of GBP 2,380 (USD 4,525) relating to the "temporary lifting gear".

234. With respect to the balance of the claim relating to tangible property losses, HSC provided inadequate explanations linking its asserted property losses to the evidence submitted. It is therefore impossible to conclude, which, if any, of the items imported on a temporary basis relate to the loss of property claimed.

3. Recommendation

235. The Panel recommends compensation in the amount of USD 4,525 for tangible property losses.

B. Payment or relief to others

1. Facts and contentions

236. HSC seeks compensation in the amount of GBP 125,918 (USD 239,388) for payment or relief to others. HSC stated that four of its personnel were in Iraq and were due to return to the United Kingdom on 9 August 1990, but they were prevented from doing so by the Iraqi authorities.

237. The four personnel, according to HSC, stayed in the "Al Sadeer NOVOTEL Hotel" in Baghdad. The hotel bills were allegedly paid by Shanning International Limited, who was the main contractor. On 28 March 1991, Shanning International Limited invoiced HSC for the costs. HSC seeks compensation relating to its personnel as follows:

(a)	Personnel costs	
	Payments to 3 personnel on labour supply sub-contracts	GBP 19,563
	Remuneration for managing director	GPB 9,620
	Subsistence payments for hostages	GBP 2,116
	Expenses for employee seeking release of hostages (head office)	GBP 2,356
(b)	Loss of service of managing director	
	5 months at GBP 10,000 per month	GBP 50,000
(c)	Accommodation costs	
	Hotel costs in Baghdad	GBP 39,920
(d)	Cost of journey Iraq to UK for 3 personnel(via Rome)	GBP 1,391
	Cost of journey Iraq to UK for 1 personnel member (via Amman)	GBP 538
(e)	Telephone calls to hostages	GBP 414
	Total	GBP 125,918

2. Analysis and valuation

238. HSC submitted some invoices and receipts of the expenses incurred. It also submitted copies of bank documents, credit card receipts and correspondence with British Telecom. The Panel finds as follows relating to each item of HSC's claim:

(a) Personnel costs

239. The Panel finds that the claim relating to the payments made to the three personnel on labour supply sub-contracts is compensable in so far as it relates to the period of detention as HSC submitted sufficient evidence to demonstrate its loss. The Panel, however, recommends compensation in the amount of GBP 16,687 (USD 31,724), which excludes the amount claimed for the week ending 10 August 1990, as that portion of the claim is more appropriately considered to be a contract loss. There was insufficient evidence submitted relating to the period for the week ending 10 August 1990 for the Panel to recommend compensation.

240. With respect to the claim for the amount of GBP 9,620 relating to its Managing Director, HSC submitted a schedule of payments but this was not supported by any invoices or actual proof of payment. The Panel finds that the claims for subsistence payments for the four hostages and the cost of the head office employee were not supported by sufficient explanations and evidence as to the asserted losses. Accordingly, the Panel recommends no compensation for the managing director, subsistence payments and the head office employee's costs.

(b) Loss of service of managing director

241. HSC did not submit any evidence to substantiate the claim for loss of the services of the Managing Director. Accordingly, the Panel recommends no compensation.

(c) Accommodation costs in Baghdad

242. The Panel finds that the claim for the accommodation costs in Baghdad of GBP 39,920 is compensable in principle. HSC, however, did not submit proof of payment to Shanning International Limited. The Panel recommends no compensation.

(d) Airfares/evacuation costs

243. HSC did not submit an explanation as to how these costs were temporary and extraordinary costs. Accordingly, the Panel recommends no compensation for airfares/evacuation costs.

(e) Telephone costs

244. HSC submitted evidence of correspondence between itself and British Telecom which established that the calls were made to Iraq. The Panel recommends compensation in the amount of GBP 414 (USD 787).

3. Recommendation

245. The Panel recommends compensation in the amount of USD 32,511.

C. Summary of recommended compensation for HSC

246. Based on its findings regarding HSC's claim, the Panel recommends compensation in the amount of USD 37,036. The Panel finds the date of loss to be 2 August 1990.

XIV. BECHTEL GROUP INC.

247. Bechtel Group Inc. ("Bechtel") is a corporation incorporated under the laws of the United States of America. Bechtel stated that at the time of Iraq's invasion and occupation of Kuwait, its wholly owned subsidiaries were engaged in projects in Iraq and Saudi Arabia. Bechtel seeks compensation in the total amount of USD 1,280,184 for accident insurance premiums and insurance costs related to the evacuation of its employees. It also makes a claim for interest.

248. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Bechtel's claim for interest.

A. Financial losses

1. Facts and contentions

(a) Personal accident insurance (Iraq)

249. Bechtel seeks compensation in the amount of USD 223,952 for personal accident insurance premiums relating to its employees in Iraq.

250. Bechtel stated that in March 1987, July 1988 and October 1989, Overseas Bechtel, Inc. and Bechtel Limited, both wholly owned subsidiaries of Bechtel, entered into agreements with the Ministry of Irrigation and the Ministry of Industry of the Government of Iraq for engineering, technical assistance and related services in connection with the Bekhme Dam Project and the PC-2 Project (Petrochemical Complex No. 2) respectively.

251. On 1 August 1990, Bechtel asserted that it had three male employees and the spouse of one of its employees located at the Bekhme Dam Project. Another employee and his wife and daughter had just arrived in Baghdad en route to the project site.

252. With respect to the PC-2 Project, Bechtel asserted that, on 1 August 1990, the staff based in Iraq totalled 101 individuals and were situated at three locations in Baghdad. No staff member had moved to the site as the campsite was incomplete. Bechtel stated that as a direct result of Iraq's invasion and occupation of Kuwait, work on both projects was stopped. Bechtel asserted that 101 of its employees in Iraq were denied exit visas and detained in Iraq.

253. The last of the employees to be evacuated from Iraq departed on 12 December 1990.

254. Bechtel claimed that it effected personal accident insurance cover relating to its personnel in Iraq. On 2 October 1990, Bechtel accepted a quotation for USD 250,000 for personal accident insurance for each of its, then, 93 employees in Iraq. On 5 October 1990, Bechtel increased the personal accident insurance by an additional USD 300,000 for each of the 91 employees then still in Iraq. The total personal accident cover effected

for each of its employees in Iraq was USD 550,000. On 29 November 1990, Bechtel reduced the insured amount to USD 300,000 per person.

(b) Personal accident insurance (Saudi Arabia)

255. Bechtel seeks compensation in the amount of USD 983,732 relating to its management decision on 5 October 1990 to provide personal accident insurance cover of USD 300,000 per person for its 272 employees based in Saudi Arabia. The decision, according to Bechtel, was based on the employees being "in a more hazardous situation than ever envisioned by the company". On 29 November 1990, Bechtel reduced the insured amount to USD 250,000 per person. The personal insurance cover in Saudi Arabia was extended on several occasions up to 26 March 1991.

(c) Evacuation insurance

256. Bechtel also seeks compensation in the amount of USD 72,500 for "contingent liability" relating to the costs for insurance cover for its personnel on five flights during the period 8 August to 5 September 1990. Bechtel stated that these flights were to "evacuate the company's employees and dependants who were not detained by Iraq and the company's dependants in Saudi Arabia".

2. Analysis and valuation

257. Bechtel asserted that the losses it claims were "suffered as a result of military operations during the period 2 August 1990 to 2 March 1991 or, alternatively, resulted from the actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation".

(a) and (b) Personal accident insurance (Iraq and Saudi Arabia)

258. In its response to the article 34 notification, Bechtel stated, that it ". . . was morally obligated to provide additional personal accident coverage to employees that had been placed in a situation far more hazardous than ever expected. Bechtel is not aware of any US law or condition of its employment contracts which otherwise required Bechtel to obtain the additional personal accident insurance."

259. In a reply to an article 34 notification question, Bechtel indicated that prior to Iraq's invasion and occupation of Kuwait its employees elected on an individual basis whether to be covered or not in terms of personal accident insurance.

260. Bechtel submitted a listing of the projects in Saudi Arabia, the job numbers, and the number of workers employed. There is no explanation as to how the conditions relating to each project site in Saudi Arabia resulted in a credible and serious threat that was intimately connected to Iraq's invasion and occupation of Kuwait.

261. The Panel finds that, with respect to the cost of accident insurance premiums relating to Bechtel's employees in Iraq and Saudi Arabia, Bechtel did not demonstrate that such asserted expenses were direct losses arising out of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for accident insurance premiums.

(c) Evacuation insurance

262. Bechtel was requested in the article 34 notification to state whether the cost of the flight insurance was "mandatory" in order to charter the flights. Bechtel, in its response, indicated that it "has not been able to locate information regarding whether it was mandatory to obtain the flight insurance in order to charter the flights."

263. Bechtel did not provide an accurate indication of what proportion of the passengers on the flights were not Bechtel's employees. It simply stated that "one or more of the flights chartered by Bechtel may have carried several employees of other companies performing work in Iraq or their dependants." There is an indication of the number of passengers on all except one of the flights. Bechtel, however, did not provide lists of passengers aboard the flights.

264. Bechtel did not provide an explanation or evidence explaining how each premium for the individual flights was calculated or the extent of the coverage for each of the flights.

265. The Panel finds that Bechtel did not submit sufficient evidence as to its asserted loss relating to evacuation insurance. Accordingly, the Panel recommends no compensation.

3. Recommendation

266. The Panel recommends no compensation for financial loss.

B. Summary of recommended compensation for Bechtel

267. Based on the Panel's findings regarding Bechtel's claim, the Panel recommends no compensation.

XV. HOWE-BAKER ENGINEERS, INC.

268. Howe-Baker Engineers, Inc. ("Howe-Baker") is a corporation organised and existing under the laws of the United States of America. It is involved in the business of consulting and contracting engineers.

269. Howe-Baker seeks compensation in the total amount of USD 215,699 for contract losses, loss of earnings and payment or relief to others. The Panel is of the view that elements of the claimed amount appear to relate to claims that are more appropriately classified as contract losses and loss of earnings. Where appropriate, the Panel has re-classified the relevant portions of the claim as such.

A. Contract losses

1. Facts and contentions

270. Howe-Baker seeks compensation for contract losses in the amount of USD 9,529.

271. A contract was entered into between State Engineering Company for Industrial Design and Construction ("SEIDACC") and Superior Air Products Division, Howe-Baker Engineers, Inc. ("the contract") to be located at Diala Governorate, Iraq. The contract is dated 4 June 1988 and had a lump sum price of USD 3,355,951. SEIDACC wanted to obtain a modularized Air Separation Unit, having the capacity to produce liquid argon. The process involves the separation of air into high purity oxygen and argon by low temperature distillation. Howe-Baker was to design, supply and provide technical advice during construction and commissioning of the plant.

272. Howe-Baker stated that its four employees were assigned to work on the portion of the contract related to "start up work for an Air Separation Plant". This work, according to Howe-Baker, began on 26 February 1990. Howe-Baker asserted that the amount outstanding related to losses incurred from 2 August 1990 to 2 March 1991 totalling USD 215,699.

273. Howe-Baker contended that its losses arose as a result of "non-payment of contractual obligations and illegal detention of US citizens". It submitted invoices relating to its claim, namely invoice numbers 29834, 29835 and 29836. The invoices appear to reflect a combination of claims for work performed, loss of earnings and payment or relief to others.

274. With respect to what appears to be the contract losses, Howe-Baker's assertion is that it had four technical service employees supervising job sites for the State Organisation for Industrial Design and Construction. This appears to be the same organisation referred to as SEIDACC. Howe-Baker asserted that from 6 August to 10 December 1990 these employees were supervising job sites. It also adds that three of them were held as "human shields" by the Iraqi authorities. In the affidavit submitted by one of the employees, there is no mention of "supervisory activities" after the

invasion and occupation of Kuwait. It is apparent from the affidavit that it was impossible for them to depart Iraq due to the activities of the Iraqi officials.

275. The unpaid invoices would, therefore, appear to relate to supervisory activity that occurred up to, at the latest, 6 August 1990. In a summary of its claim attached to the statement of claim, the asserted contract losses are stated for a period from 2 to 6 August 1990 and can be summarised as follows:

Table 3. Howe-Baker's claim for supervision for period 2 to 6 August 1990

Invoice no. 29834	5 days at USD 500 per day	USD 2,500
Invoice no. 29835	5 days at USD 500 per day	USD 2,500
Invoice no. 29836	5 days at USD 500 per day	USD 2,500
Total		7,500

Table 4. Howe-Baker's claim for expenses: Hotel, food, laundry and taxi for period 2 to August 1990

Invoice no. 29834	-
Invoice no. 29835	USD 472
Invoice no. 29836	USD 1,557
Total	2,029

276. Howe-Baker stated that the amounts claimed are in terms of a section of the contract that was "cost reimbursable for expenses and $500 a day for time." Section 6 of the contract stated that Howe-Baker shall:

> "...provide technical assistance during erection, commissioning and start up and test run at a per diem rate of 500 U.S. $ per day. The charges will commence on the day SUPAIRCO personnel leave SUPAIRCO's office in TYLER TEXAS with the maximum travel time two days each way. Travel cost, hotel, local subsistence for such service are to be paid by SEIDACC."

2. Analysis and valuation

277. The Panel finds that the contract was with Iraq and the work performed by Howe-Baker under the contract included in Howe-Baker's claim was performed after 2 May 1990. The claim is therefore within the jurisdiction of the Commission.

278. Howe-Baker submitted a copy of the contract. The Panel finds that the provisions of the contract relating to the daily rate for the services to be provided at USD 500 per day are evident from the relevant clause in the contract. Howe-Baker also submitted three invoices. The Panel finds that Howe-Baker submitted sufficient evidence as to its entitlement in the amount of USD 7,500 relating to services rendered for the period from 2 to 6 August 1990. With respect to the asserted losses relating to hotel, food, laundry and taxi for the period 2 to 6 August 1990, Howe-Baker did not submit the vouchers supporting these costs. Nor did it submit proof of payment of the alleged expenses. The Panel recommends no compensation for the asserted losses relating to hotel, food, laundry and taxi for the period 2 to 6 August 1990.

3. Recommendation

279. The Panel recommends compensation in the amount of USD 7,500.

B. Loss of earnings

1. Facts and contentions

280. Howe-Baker seeks compensation in the amount of USD 189,000 for loss of earnings. The claim for loss of earnings appears to be based on the inability of Howe-Baker's three employees to leave Iraq after Iraq's invasion and occupation of Kuwait. For each of its three employees who were detained in Iraq, Howe-Baker has sought payment relating to the period from 7 August to 10 December 1990 during which its employees were detained in Iraq.

281. Howe-Baker has based the claimed amount on section 6 of the contract with SEIDACC which stipulates a *per diem* of USD 500 per day. This amount, however, relates specifically to technical services that were to be provided by Howe-Baker. There do not appear to have been any technical services provided during the period from 7 August to 10 December 1990.

282. The claim is not based on the entirety of its contract with SEIDACC, but appears limited to that portion of the contract being undertaken by its three employees.

283. It is not clear when the employees were due to complete the technical services in terms of the contract. Howe-Baker states only that "[t]he job was nearing completion and these employees would have come home before

December 12, 1990. We are trying to recoup for the extra time they had to spend in Iraq due to the invasion."

284. The amounts claimed are calculated for a period of 126 days for each of the three employees and the total asserted loss of earnings amounts to USD 189,000.

2. Analysis and valuation

285. The Panel finds that Howe-Baker did have a contract in existence, which was disrupted by Iraq's invasion and occupation of Kuwait on 2 August 1990. It did not, however, indicate when the supervisory services were to cease apart from the assertion that the employees would return before 12 December 1990.

286. Howe-Baker provided no evidence of any other costs which it may have incurred in performing the contract, for example, the overhead costs of its head office, which may have affected the profitability of the contract as a whole.

287. Howe-Baker submitted Consolidated Financial Statements for Process Systems International for the years ending 31 December 1989, 1990 and 1991 to support its assertion relating to loss of earnings. It did not submit information directly linked to the project which would include: audited financial statements, budgets, management accounts, turnover, original bids, profit/loss statements, finance costs and head office costs prepared by or on behalf of Howe-Baker for each accounting period commencing in year 1 of the Project and continuing through March 1993.

288. The Panel recommends no compensation for loss of earnings as Howe-Baker did not submit sufficient evidence of its loss.

3. Recommendation

289. The Panel recommends no compensation for loss of earnings.

C. Payment or relief to others

1. Facts and contentions

290. Howe-Baker seeks compensation in the amount of USD 17,170 relating to the asserted illegal detention of three of its employees in Iraq by the Iraqi authorities. The three employees were engaged as technical supervisors with respect to the contract with SEIDACC. Two of the employees were American nationals and one was British. On 7 August 1990 the employees were advised by the United States embassy that American nationals should attempt to leave Iraq. The three employees, according to an affidavit of one of the employees, were denied permission to leave Iraq as the authorities refused to grant them exit visas. It appears as though sanctuary was offered at the United States Embassy from about 19 August 1990 and the American nationals appear to have moved into the Embassy.

This was in order to avoid being "picked up" by the Iraqi authorities. The British national chose to remain in his hotel.

291. According to the affidavit of one of the employees, "the local bank accounts were frozen. The balance in the bank was approximately 13,000ID. We had approximately 2500ID in cash. The cost of living in the Residency was approximately 1000ID per month." The two American nationals were released on 10 December 1990 and flew to Frankfurt. On 11 December 1990, they flew to the United States from Frankfurt. The British national flew to London from Iraq on 11 December 1990.

2. Analysis and valuation

292. The following information about each employee was submitted by Howe-Baker: family name, first name, and passport number with issuing country for only one employee. Copies of Howe-Baker's payroll records for the employees for the period relevant to the claim (both before and after 2 August 1990) were not provided nor were the Iraqi residency permit numbers for the employees submitted.

293. The evidence of the loss submitted consists of an attachment, an affidavit from one of Howe-Baker's employees and three invoice numbers, 29834, 29835 and 29836. These invoices list the expenses relating to airfares, hotel, food, taxi and miscellaneous items for the period 7 August 1990 to 10 December 1990. There are no supporting vouchers detailing the expenses listed on the invoices. Further, Howe-Baker did not submit proof of having incurred these costs by way of receipts for payment, for example.

294. The Panel recommends no compensation for payment or relief to others as Howe-Baker did not submit sufficient evidence that it paid for these costs.

3. Recommendation

295. The Panel recommends no compensation for payment or relief to others.

D. Summary of recommended compensation for Howe-Baker

296. Based on its findings regarding Howe-Baker's claim, the panel recommends compensation in the amount of USD 7,500. The Panel finds the date of loss to be 2 August 1990.

XVI. ITEK OPTICAL SYSTEMS DIVISIONS

297. Itek Optical Systems Divisions ("Itek"), a division of Litton Systems, Inc., is a corporation organised and existing under the laws of the United States of America. Itek undertakes the research, development, design and manufacture of electric equipment. Itek seeks compensation in the total amount of USD 98,972 for payment or relief to others.

A. Payment or relief to others

1. Facts and contentions

298. Itek seeks compensation in the gross amount of USD 173,089 for payment or relief to others in relation to the detention of three of its employees by the Iraqi authorities. It has offset against this, the amount of compensation that it received relating to an insurance policy recovery totalling USD 74,116. This results in a net claim to the Commission of USD 98,972.

299. Itek stated that its three employees were in Kuwait at the invitation of the Kuwait Airforce. The trip was a business development visit. The employees arrived in Kuwait on 31 July 1990. On 1 August 1990 they had a meeting with the Kuwait Airforce. They were scheduled to meet with the commander of the Kuwait Airforce on 2 August 1990.

300. Iraqi military authorities detained the employees on 4 August 1990. The employees were transported to Iraq and held at various institutions as "human shields". One of the employees was released on 10 September 1990, the second was released on 10 December 1990 and the third employee was released on 11 December 1990. Two of the employees were unable to resume work until 2 January 1991 due to the "ill effects of their detention and mistreatment by the Government of Iraq".

301. Itek's claim consists of three items as follows:

(a) Compensation to detained employees during detention and recovery

302. Itek seeks compensation for USD 88,851 relating to asserted compensation paid to its three employees. The amounts paid were salary payments during the period of detention of the employees, and during the period when they were "recovering" and unable to work upon their release from detention.

(b) Reimbursement to detained employees for loss of personal possessions

303. Itek stated that upon the detention of its employees by the Iraqi authorities they had to abandon their personal possessions in Kuwait. It asserted that it compensated its employees for the loss of their personal possessions. Itek seeks compensation in the amount of USD 7,042.

(c) Hardship allowance

304. Itek seeks compensation in the amount of USD 77,196 which it asserted it paid to its three employees. This amount was paid, Itek asserted, in order to "compensate them for the stress, hardship and separation from their families which they incurred while travelling on Claimant's business."

(d) Insurance compensation received

305. Itek stated that it filed a claim with its insurer, the National Union Fire Insurance Company Unit of American International Underwriters ("AIU"), in connection with the losses, which are the subject of this claim. Itek acknowledged receiving a payment from AIU on its claim in the amount of USD 74,117. The amount has been deducted from the total claim that Itek submitted to the Commission. Itek claimed for compensation from AIU in terms of a Corporate Kidnap and Ransom/Extortion Insurance Policy number 80-160278 issued by AIU. The Release form signed by Itek (in about July 1991 as the exact date is not clear from the copy attached) comprised the following amounts:

Payroll expenses	USD 77,196.08
Less deductible	USD (3,079.44)
Total received	USD 74,116.64

2. Analysis and valuation

306. The compensation by AIU appears to be confined to the payroll expenses for the period that the employees were held hostage. It does not include the asserted losses to the employees' possessions, payments made during the "recovery" or the "hardship allowance". Itek did not submit an explanation for the amounts deducted from the release. It merely refers to them as "deductibles under the policy".

307. Itek deducted the amount paid in compensation by AIU from the entire claimed amount submitted. It is the view of the Panel that the amount from AIU should be deducted from the cost of the salaries paid to the employees only. The net result would be that, in the absence of an explanation relating to the amount of USD 3,079 deducted from the policy, Itek has been fully compensated for that particular loss element.

(a) Compensation to detained employees during detention and recovery

308. The Panel recommends that, in line with its previous decisions, only salary costs up to the final date of departure of Itek employees should be compensable. Given that the salary costs have been compensated already by insurance payouts, the Panel recommends no compensation for losses relating to salary. In the absence of an explanation relating to the nature of the amount of USD 3,079 deducted from the insurance payout, the Panel recommends no compensation for that amount.

(b) Reimbursement to detained employees for loss of personal possessions

309. Itek submitted copies of its internal requests for cheque disbursements in favour of its three employees along with receipts relating to items purchased. The Panel finds that Itek submitted evidence entitling it to compensation in the amount of USD 7,042.

(c) Hardship allowance

310. Itek provided the following information about each employee: family name, first name, employee identification number and passport number with issuing country. Itek submitted two copies of payroll records relating to January 1991 only and relating to two of its employees. It did not submit proof of payment, apart from an Internal Memorandum of Itek dated 2 June 1991 summarising expenses incurred on employees.

311. Itek did not establish how the losses arose directly as a result of Iraq's invasion and occupation of Kuwait. The Panel accordingly recommends no compensation for the hardship allowance paid to the employees.

3. Recommendation

312. The Panel recommends compensation of USD 7,042 for payment or relief to others.

B. Summary of recommended compensation for Itek

313. Based on its findings regarding Itek's claim, the panel recommends compensation in the amount of USD 7,042. The Panel finds the date of loss to be 2 August 1990.

XVII. ENERGOPROJEKT BUILDING AND GENERAL CONTRACTING COMPANY LIMITED

314. Energoprojekt Building and General Contracting Company Limited ("Energoprojekt") is a joint stock company incorporated according to the laws of the Republic of Yugoslavia. Energoprojekt is a provider of construction and engineering services and was involved in various projects in Iraq. Energoprojekt seeks compensation for asserted losses relating to contract, tangible property and interest totalling USD 3,137,264.

315. The interest element is in the amount of USD 748,264. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Energoprojekt's claim for interest.

A. Contract losses

1. Facts and contentions

316. Energoprojekt seeks compensation in the amount of USD 1,157,556 for contract losses. The claim is for outstanding interim payment certificates and unpaid retention monies in respect of the restoration and maintenance of the Old Head Office Building of the Central Bank of Iraq in Baghdad. On 22 October 1988, Energoprojekt entered into a lump sum contract with the Central Bank of Iraq ("the employer") for civil engineering works relating to the restoration and maintenance of the Old Head Office Building of the Central Bank of Iraq in Baghdad. The contract price was a lump sum amount of IQD 1,809,000 "plus ID 91,000 contingencies". Under the contract, Energoprojekt had 365 days to "complete and hand over the works."

317. Energoprojekt commenced the maintenance and restoration work on 31 December 1988. The initial stage involved dismantling work with respect to the ceiling, doors, partitioning, flooring, electrical works and plumbing. This aspect of the work took about 2.5 months to complete.

318. The next stage of the project involved the works on the building structure itself. This included work on the plumbing, electrical, ceilings, partitioning, doors, windows, and flooring. The works were completed on 16 June 1990 and the maintenance period commenced on 1 July 1990. In terms of the contract, the maintenance period was to last one year and therefore was due to expire on 30 June 1991. Energoprojekt asserted that the employer required it to rectify the works in accordance with the "snag list" supplied by the Resident Engineer.

319. Energoprojekt stated that, notwithstanding Iraq's invasion and occupation of Kuwait on 2 August 1990, it continued to maintain a presence on the site and to remedy the defects on the "snag list". Energoprojekt indicated that it was unable to complete the "snag list" in full as it was unable to import materials. In a letter to the employer dated 17 August 1990, Energoprojekt outlined the difficulty with sourcing material and manpower. It also indicated that, due to the circumstances prevailing in Iraq, it was also sending a number of its workers "for a short holiday".

By 22 August 1990, Energoprojekt indicated that it had only 25 per cent of its personnel on site. The remainder of its expatriate staff were evacuated by 14 January 1991. Further work to complete the project became impossible. Energoprojekt asserted that it had completed 50 per cent of the items on the "snag list".

320. Energoprojekt stated that it seeks compensation in terms of its "draft final account". It appears that the claim is for unpaid contractual amounts that were included in Energoprojekt's draft final account.

2. Analysis and valuation

321. The Panel finds that the Central Bank of Iraq is an Iraqi state agency.

322. The first element of the loss is with respect to outstanding interim payment certificates. Energoprojekt submitted the following interim payment certificates:

(a) Interim Certificate number 15, dated 26 April 1990 and relating to work performed during the period ending March 1990;

(b) Interim Certificate number 16 dated 24 May 1990 and relating to work performed during the period ending April 1990;

(c) Interim Certificate number 17, dated 20 June 1990 and relating to work performed during the period ending May 1990; and

(d) Interim Certificate number 18, dated 9 July 1990 and relating to work performed during the period ending June 1990.

323. The Panel finds that the work, with respect to Interim Payment Certificates Numbers 15 and 16, relate to work performed during the periods ending March 1990 and April 1990 respectively and accordingly relate to performances which are outside the jurisdiction of the Commission.

324. Interim Payment Certificates Numbers 17 and 18 refer to work performed during the period ending May 1990 and June 1990 respectively. As the performance took place after 2 May 1990, the amounts claimed are within the jurisdiction of the Commission. The Panel finds that Energoprojekt submitted evidence which demonstrates that it is entitled to payment of USD 170,000.

325. Energoprojekt asserted losses relating to the non-release of the retention monies in the amount of IQD 95,000 (USD 304,844). According to the contract, it would have been entitled to 50 per cent of the retention payments made under the interim certificates upon the commencement of the maintenance period. The balance of 50 per cent would have been released upon the issue of the final maintenance certificate.

326. This Panel discusses the issue of unpaid retention amounts in paragraphs 78 to 84 of the Summary. The Panel finds that the evidence submitted by Energoprojekt demonstrated that the project would have reached a conclusion, but there were a number of "snags" to complete prior to completion. This would have necessitated Energoprojekt incurring some costs in order to complete the project. In accordance with the approach previously taken by the Panel, the Panel determines that Energoprojekt would have been entitled to payment of a retention amount of IQD 71,500 (USD 229,904) and recommends compensation in this amount.

3. Recommendation

327. The Panel recommends compensation of USD 399,904 for contract loss.

B. Loss of tangible property

328. Energoprojekt seeks compensation in the amount of USD 1,231,444 for loss of tangible property. It stated that it had set up a temporary camp at Al Shaab to accommodate its personnel working on the project with the Central Bank of Iraq. Energoprojekt asserted that, on 11 May 1992, the Al Fao State Organisation requested Energoprojekt to produce an inventory of the moveable items on site. Energoprojekt stated that it produced an inventory, which was signed by three of its representatives and one of the representatives of the Government of Iraq.

329. Energoprojekt stated that the "camp was confiscated by the Al Fao State Organisation by an administrative Order promulgated in or about May 1992".

330. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 146 of the Summary, the Panel recommends no compensation.

C. Summary of recommended compensation for Energoprojekt

331. Based on its findings regarding Energoprojekt's claim, the Panel recommends compensation in the amount of USD 399,904. The Panel finds the date of loss to be 2 August 1990.

XVIII. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

Table 5. Recommended compensation for the fifteenth instalment

Claimant	Claim amount (USD)	Recommended Compensation (USD)
Lenzing Aktiengesellschaft	6,522,682	nil
Koncar Elektroindustrija d.d.	8,440,131	nil
Stadler & Schaaf OHG	20,055	nil
Krupp Industrietechnik GmbH	92,771	27,916
Unitech Limited	25,000	nil
Icomsa Engineering Costruzioni e Impianti S.p.A.	6,592,022	nil
Pacific Consultants International	15,306	nil
Kajima Corporation	46,742	nil
Taisei Corporation	107,362	15,942
Sumitomo Construction Co. Ltd	41,684	1,634
ABB HV Switchgear AB	169,150	nil
Health and Scientific Construction Limited	255,985	37,036
Bechtel Group, Inc.	1,280,184	nil
Howe-Baker Engineers Inc	215,699	7,500
Itek Optical Systems Division	98,972	7,042
Energoprojekt Building and General Contracting Company Limited	3,137,264	399,904

Geneva, 21 June 2000

(Signed) Pierre Genton
Commissioner

(Signed) Vinayak Pradhan
Commissioner

(Signed) John Tackaberry
Chairman

Annex I

SUMMARY OF GENERAL PROPOSITIONS

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Introduction

1. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E3" Claims (S/AC.26/1999/14) (the "Fourth Report"), this Panel set out some general propositions based on those claims which had come before it and the findings of other panels of Commissioners contained in their reports and recommendations. Those propositions, as well as some observations specific to the claims in the fourth instalment of "E3" claims, are to be found in the introduction to the Fourth Report (the "Preamble").

2. The Fourth Report was approved by the Governing Council in its decision 74 (S/AC.26/Dec.74 (1999)); and the claims that this Panel has subsequently encountered continue to manifest the same or similar issues. Accordingly, the Panel has revised the Preamble, so as to delete the specific comments, and thus present this Summary of General Propositions (the "Summary"). The Summary is intended to be annexed to, and to form part of, the reports and recommendations made by this Panel. The Summary should facilitate the drafting, and reduce the size, of this Panel's future reports, since it will not be necessary to set matters out in extenso in the body of each report.

3. As further issues are resolved, they may be added at the end of future editions of this Summary.

4. In this Summary, the Panel wishes to record:

(a) the procedure involved in evaluating the claims put before it and in formulating recommendations for the consideration of the Governing Council; and

(b) its analyses of the recurrent substantive issues that arise in claims before the Commission relating to construction and engineering contracts.

5. In deciding to draft this Summary in a format which was separated out from the actual recommendations in the report itself, and in a way that was re-usable, the Panel was motivated by a number of matters. One was the desire to keep the substantive element of its reports to a manageable length. As the number of reports generated by the various panels increases, there seems to be a good deal to be said for what might be called economies of scale. Another matter was the awareness of the Panel of the high costs involved in translating official documents from their original language into each official language of the United Nations. The Panel is concerned to avoid the heavy costs of re-translation of recurrent texts, where the Panel is applying established principles to fresh claims. That re-translation would occur if the reasoning set out in this Summary had been incorporated into the principal text of each report at each relevant point. And, of course, that very repetition of principles seems

unnecessary in itself, and this Summary avoids it. In sum, it is the intention of the Panel to shorten those reports and recommendations, wherever possible, and thereby to reduce the cost of translating them.

I. THE PROCEDURE

A. Summary of the process

6. Each of the claimants whose claims are presented to this Panel is given the opportunity to provide the Panel with information and documentation concerning the claims. In its review of the claims, the Panel considers evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"). The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other panels, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel is mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel expounds in this Summary both procedural and substantive aspects of the process of formulating recommendations in its consideration of the individual claims.

B. The nature and purpose of the proceedings

7. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559).

8. The Panel is entrusted with three tasks in its proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Second, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

9. In fulfilling these tasks, the Panel considers that the vast number of claims before the Commission and the time limits in the Rules necessitate the use of an approach which is itself unique, but the principal characteristics of which are rooted in generally accepted procedures for claim determination, both domestic and international. It involves the employment of well established general legal standards of proof and valuation methods that have much experience behind them. The resultant process is essentially documentary rather than oral, and inquisitorial rather than adversarial. This method both realises and balances the twin

objectives of speed and accuracy. It also permits the efficient resolution of the thousands of claims filed by corporations with the Commission.

C. The procedural history of the "E3" Claims

10. The claims submitted to the Panel are selected by the secretariat of the Commission from among the construction and engineering claims (the ""E3" Claims") on the basis of established criteria. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category "E" claims").

11. Prior to presenting each instalment of claims to the Panel, the secretariat performs a preliminary assessment of each claim included in a particular instalment in order to determine whether the claim meets the formal requirements established by the Governing Council in article 14 of the Rules.

12. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. These claimants must submit:

(a) an "E" claim form with four copies in English or with an English translation;

(b) evidence of the amount, type and causes of losses;

(c) an affirmation by the Government that, to the best of its knowledge, the claimant is incorporated in or organized under the law of the Government submitting the claim;

(d) documents evidencing the name, address and place of incorporation or organization of the claimant;

(e) evidence that the claimant was, on the date on which the claim arose, incorporated or organized under the law of the Government which has submitted the claim;

(f) a general description of the legal structure of the claimant; and

(g) an affirmation by the authorized official for the claimant that the information contained in the claim is correct.

13. Additionally, the "E" claim form requires that a claimant submit with its claim a separate statement in English explaining its claim ("Statement of Claim"), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed losses. The following particulars are requested in the "INSTRUCTIONS FOR CLAIMANTS":

(a) the date, type and basis of the Commission's jurisdiction for each element of loss;

(b) the facts supporting the claim;

(c) the legal basis for each element of the claim; and

(d) the amount of compensation sought and an explanation of how the amount was calculated.

14. If it is determined that a claim does not provide these particulars or does not include a Statement of Claim, the claimant is notified of the deficiencies and invited to provide the necessary information pursuant to article 15 of the Rules (the "article 15 notification"). If a claimant fails to respond to that notification, the claimant is sent a formal article 15 notification.

15. Further, a review of the legal and evidentiary basis of each claim identifies specific questions as to the evidentiary support for the alleged losses. It also highlights areas of the claim in which further information or documentation is required. Consequently, questions and requests for additional documentation are transmitted to the claimants pursuant to article 34 of the Rules (the "article 34 notification"). If a claimant fails to respond to the article 34 notification, a reminder notification is sent to the claimant. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim is conducted. Communications with claimants are made through their respective governments.

16. It is the experience of the Panel in the claims reviewed by it to date that this analysis usually brings to light the fact that many claimants lodge little material of a genuinely probative nature when they initially file their claims. It also appears that many claimants do not retain clearly relevant documentation and are unable to provide it when asked for it. Indeed, some claimants destroy documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims that they have put forward. Some claimants carry this to the extreme of having to ask the Commission, when responding to an article 15 or an article 34 notification, for a copy of their own claim. Finally, some claimants do not respond to requests for further information and evidence. The consequence is inevitably that for a large number of loss elements and a smaller number of claimants the Panel is unable to recommend any compensation.

17. The Panel performs a thorough and detailed factual and legal review of the claims. The Panel assumes an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel makes initial determinations as to the compensability of the loss

elements of each claim. Next, reports on each of the claims are prepared focusing on the appropriate valuation of each of the compensable losses, and on the question of whether the evidence produced by the claimant is sufficient in accordance with article 35(3) of the Rules.

18. The cumulative effect is one of the following recommendations: (a) compensation for the loss in the full amount claimed; (b) compensation for the loss in a lower amount than that claimed; or (c) no compensation.

II. PROCEDURAL ISSUES

A. Panel recommendations

19. Once a motivated recommendation of a panel is adopted by a decision of the Governing Council, it is something to which this Panel gives great weight.

20. All panel recommendations are supported by a full analysis. When a new claim is presented to this Panel it may happen that the new claim will manifest the same characteristics as the previous claim which has been presented to a prior panel. In that event, this Panel will follow the principle developed by the prior panel. Of course, there may still be differences inherent in the two claims at the level of proof of causation or quantum. Nonetheless the principle will be the same.

21. Alternatively, that second claim will manifest different characteristics to the first claim. In that event, those different characteristics may give rise to a different issue of principle and thus warrant a different conclusion by this Panel to that of the previous panel.

B. Evidence of loss

22. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has stated in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation (S/AC.26/1992/15).

23. The Panel takes this opportunity to emphasise that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission of evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. In implementing this approach, the Panel applies the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

1. Sufficiency of evidence

24. In the final outcome, claims that are not supported by sufficient and appropriate evidence fail. In the context of the construction and engineering claims that are before this Panel, the most important evidence is documentary. It is in this context that the Panel records a syndrome which it found striking when it addressed the first claims presented to it and which has continued to manifest itself in the claims subsequently encountered. This was the reluctance of claimants to make critical documentation available to the Panel.

25. Imperatively, the express wording of decision 46 of the Governing Council requires that "... claims received in categories 'D', 'E', and 'F' must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss ..." In this same decision, the Governing Council confirmed that "... no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant,..." (S/AC.26/Dec.46(1998)).

26. It is also the case that the Panel has power under the Rules to request additional information and, in unusually large or complex cases, further written submissions. Such requests usually take the form of procedural orders. Where such orders are issued, considerable emphasis is placed on this need for sufficient documentary and other appropriate evidence.

27. Thus there is an obligation to provide the relevant documentary evidence both on the first filing of a claim and on any subsequent steps.

28. What is more, the absence of any relevant contemporary record to support a particular claim means that the claimant is inviting the Panel to make an award, often of millions of dollars, on no foundation other than the assertion of the claimant. This would not satisfy the "sufficient evidence" rule in article 35(3) of the Rules and would go against the instruction of the Governing Council contained in decision 46. It is something that the Panel is unable to do.

2. Sufficiency under article 35(3): The obligation of disclosure

29. Next in the context of documentary evidence, this Panel wishes to highlight an important aspect of the rule that claims must be supported by sufficient documentary and other appropriate evidence. This involves bringing to the attention of the Commission all material aspects of the claim, whether such aspects are seen by the claimant as beneficial to, or reductive of, its claims. The obligation is not dissimilar to good faith requirements under domestic jurisdictions.

3. Missing documents: The nature and adequacy of the paper trail

30. The Panel now turns to the question of what is required in order to establish an adequate paper trail.

31. Where documents cannot be supplied, their absence must be explained in a credible manner. The explanation must itself be supported by the appropriate evidence. Claimants may also supply substitute documentation for or information about the missing documents. Claimants must remember that the mere fact that they suffered a loss at the same time as the hostilities in the Persian Gulf were starting or were in process does not mean that the loss was directly caused by Iraq's invasion and occupation of Kuwait. A causative link must be established. It should also be borne in mind that it was not the intention of the Security Council in its resolutions to provide a "new for old" basis of reimbursement of the losses suffered in respect of tangible property. Capital goods depreciate. That depreciation must be taken into account and demonstrated in the evidence filed with the Commission. In sum, in order for evidence to be considered appropriate and sufficient to demonstrate a loss, the Panel expects claimants to present to the Commission a coherent, logical and sufficiently evidenced file leading to the financial claims that they are making.

32. Of course, the Panel recognises that in time of civil disturbances, the quality of proof may fall below that which would be submitted in a peace time situation. Persons who are fleeing for their lives do not stop to collect the audit records. Allowances have to be made for such vicissitudes.

33. Thus the Panel is not surprised that some of the claimants in the instalments presented to it to date seek to explain the lack of documentation by asserting that it is, or was, located in areas of civil disorder or has been lost or destroyed, or, at least, cannot be accessed. But the fact that offices on the ground in the region have been looted or destroyed would not explain why claimants have not produced any of the documentary records that would reasonably be expected to be found at claimants' head offices situated in other countries.

34. The Panel approaches the claims presented to it in the light of the general and specific requirements to produce documents noted above. Where there is a lack of documentation, combined with no or no adequate explanation for that lack, and an absence of alternative evidence to make good any part of that lack, the Panel has no opportunity or basis upon which to make a recommendation.

C. Amending claims after filing

35. In the course of processing the claims after they have been filed with the Commission, further information is sought from the claimants pursuant to the Rules. When the claimants respond they sometimes seek to use the opportunity to amend their claims. For example, they add new loss

elements. They increase the amount originally sought in respect of a particular loss element. They transfer monies between or otherwise adjust the calculation of two or more loss elements. In some cases, they do all of these.

36. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council approved a mechanism for these claimants to file unsolicited supplements until 11 May 1998. After that date a response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a loss element or elements or to seek to recover in respect of new loss elements. In these circumstances, the Panel is unable to take into account such increases or such new loss elements when it is formulating its recommendations to the Governing Council. It does, however, take into account additional documentation where that is relevant to the original claim, either in principle or in detail. It also exercises its inherent powers to re-characterise a loss, which is properly submitted as to time, but is inappropriately allocated.

37. Some claimants also file unsolicited submissions. These too sometimes seek to increase the original claim in the ways indicated in the previous paragraph. Such submissions when received after 11 May 1998 are to be treated in the same way as amendments put forward in solicited supplements. Accordingly the Panel is unable to, and does not, take into account such amendments when it is formulating its recommendations to the Governing Council.

III. SUBSTANTIVE ISSUES

A. Applicable law

38. As set forth in paragraphs 17 and 18 of the Fourth Report, paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. Pursuant to article 31 of the Rules, the Panel applies Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

39. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

40. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq" was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of "E3" Claims (the "Fifth Report", S/AC.26/1999/2), this Panel adopted the presumption that for contracts performed in Iraq, the other contracting party was an Iraqi Government entity.

C. The "arising prior to" clause

41. The Panel recognises that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of "E2" claims concluded that the "arising prior to" clause was intended to exclude the foreign debt of Iraq which existed at the time of Iraq's invasion of Kuwait from the jurisdiction of the Commission. As a result, the "E2" Panel found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E2" Claims, S/AC.26/1998/7, paragraph 90)).

42. That report was approved by the Governing Council. Accordingly, this Panel adopts the "E2" Panel's interpretation which is to the following effect:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

43. Thus, this Panel accepts that, in general, a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt or obligation that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

44. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is available for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention."

45. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

46. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered business "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific

guidance to the Panel as to how the "direct loss" requirement must be interpreted.

47. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of "direct loss". These conclusions are set out in the following paragraphs.

48. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two matters. First, that the breakdown in civil order in these countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees. Second, as set forth in paragraph 13 of decision 9, that the claimant left physical assets in Iraq or in Kuwait.

49. With respect to losses relating to contracts to which Iraq was a party, force majeure or similar legal principles are not available as a defence to the obligations of Iraq.

50. With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following Iraq's invasion caused the claimant to evacuate the personnel needed to perform the contract.

51. In the context of the losses set out above, reasonable costs which have been incurred to mitigate those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

52. These findings regarding the meaning of "direct loss" are not intended to resolve every issue that may arise with respect to this Panel's interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims.

53. Finally, there is the question of the geographical extent of the impact of events in Iraq and Kuwait outside these two countries. Following on the findings of the "E2" Panel in its first report, this Panel finds that damage or loss suffered as a result of (a) military operations in the region by either the Iraqi or the Allied Coalition Forces or (b) a credible and serious threat of military action that was connected to Iraq's invasion and occupation of Kuwait is compensable in principle. Of course, the further the project in question was from the area where military operations were taking place, the more the claimant may have to do to establish causality. On the other hand, the potential that an event such as the invasion and occupation of Kuwait has for causing an extensive ripple effect cannot be ignored. Each case must depend on its facts.

E. Date of loss

54. There is no general principle with respect to the date of loss. It needs to be addressed on an individual basis. In addition, the specific loss elements of each claim may give rise to different dates if analysed strictly. However, applying a different date to each loss element within a particular claim is impracticable as a matter of administration. Accordingly, the Panel has decided to determine a single date of loss for each claimant, which, in most cases, coincides with the date of the collapse of the project.

F. Currency exchange rate

55. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

56. The Panel finds that, as a general rule, where an exchange rate is set forth in the contract then that is the appropriate rate for losses under the relevant contracts because this was specifically agreed by the parties.

57. For losses that are not contract based, however, the contract rate is not usually an appropriate rate of exchange. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, at the date of loss.

G. Interest

58. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

59. Accordingly, the Panel recommends that interest shall run from the date of loss.

H. Claim preparation costs

60. Some claimants seek to recover compensation for the cost of preparing their claims. The compensability of claim preparation costs has not hitherto been ruled on and will be the subject, in due course, of a specific decision by the Governing Council. Therefore, this Panel has made

and will make no recommendations with respect to claim preparation costs in any of the claims where they have been raised.

I. Contract losses

1. Claims for contract losses with non-Iraqi party

61. Some of the claims relate to losses suffered as a result of non-payment by a non-Iraqi party. The fact of such a loss, simpliciter, does not establish it as a direct loss within the meaning of Security Council resolution 687 (1991). In order to obtain compensation, a claimant must lodge sufficient evidence that the entity with which it carried on business on 2 August 1990 was unable to make payment as a direct result of Iraq's invasion and occupation of Kuwait.

62. A good example of this would be that the party was insolvent and that the insolvency was a direct result of Iraq's invasion and occupation of Kuwait. At the very least a claimant should demonstrate that the other party had not renewed operations after the end of the occupation. In the event that there are multiple factors which have resulted in the failure to resume operations, apart from the proved insolvency of the other party, the Panel will have to be satisfied that the effective reason or causa causans was Iraq's invasion and occupation of Kuwait.

63. Any failure to pay because the other party was excused from performance by the operation of law which came into force after Iraq's invasion and occupation of Kuwait is in the opinion of this Panel the result of a novus actus interveniens and is not a direct loss arising out of Iraq's invasion and occupation of Kuwait.

2. Advance payments

64. Many construction contracts provide for an advance payment to be made by the employer to the contractor. These advance payments are often calculated as a percentage of the initial price (initial, because many such contracts provide for automatic and other adjustments of the price during the execution of the works). The purpose of the advance payment is to facilitate certain activities which the contractor will need to carry out in the early stages.

65. Mobilisation is often one such activity. Plant and equipment may need to be purchased. A workforce will have to be assembled and transported to the work site, where facilities will be needed to accommodate it. Another such activity is the ordering of substantial or important materials which are in short supply and may, therefore, be available only at a premium or at a long lead time.

66. Advance payments are usually secured by a bond provided by the contractor, and are usually paid upon the provision of the bond. They are frequently repaid over a period of time by way of deduction by the employer

from the sums which are payable at regular intervals (often monthly) to the contractor for work done. See, in the context of payments which are recovered over a period of time, the observations about amortisation at paragraph 120, infra. Those observations apply mutatis mutandis to the repayment of advance payments.

67. The Panel notes that some claimants presenting claims have not clearly accounted for the amounts of money already paid to them by the employer. This Panel regularly sees evidence of advance payments amounting to tens of millions of United States dollars. Where advance payments have been part of the contractual arrangements between the claimant and the employer, the claimant must account for these payments in reduction of its claims, unless these payments can be shown to have been recouped in whole or in part by the employer. Where no explanation or proof of repayment is forthcoming, the Panel has no option but to conclude that these amounts paid in advance are due, on a final accounting, to the employer, and must be deducted from the claimant's claim.

3. Contractual arrangements to defer payments

(a) The analysis of "old debt"

68. Where payments are deferred under the contracts upon which the claims are based, an issue arises as to whether the claimed losses are "debts and obligations arising prior to 2 August 1990" and therefore outside the jurisdiction of the Commission.

69. In its first report, the "E2" Panel interpreted Security Council resolution 687 (1991) as intending to eliminate what may be conveniently called "old debt". In applying this interpretation to the claim before it the "E2" Panel identified, as "old debt", cases where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990. In those cases, claims based on payments owed, in kind or in cash, for such performance are outside the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990. "Performance" as understood by the "E2" Panel for the purposes of this rule meant complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance. In the claim the "E2" Panel was considering, the work under the contract was clearly performed prior to 2 May 1990. However, the debts were covered by a form of deferred payments agreement dated 29 July 1984. This agreement was concluded between the parties to the original contracts and postdated the latter.

70. In its analysis, the "E2" Panel found that deferred payments arrangements go to the very heart of what the Security Council described in paragraph 16 of resolution 687 as a debt of Iraq arising prior to 2 August 1990. It was this very kind of obligation which the Security Council had

in mind when, in paragraph 17 of resolution 687 (1991), it directed Iraq to "adhere scrupulously" to satisfying "all of its obligations concerning servicing and repayment". Therefore, irrespective of whether such deferred payment arrangements may have created new obligations on the part of Iraq under a particular applicable municipal law, they did not do so for the purposes of resolution 687 (1991) and are therefore outside the jurisdiction of this Commission.

71. The arrangements that the "E2" Panel was considering were not arrangements that arose out of genuine arms' length commercial transactions, entered into by construction companies as part and parcel of their normal businesses. Instead the situation which the "E2" Panel was addressing was described as follows:

> "The negotiation of these deferred payment arrangements was typically conducted with Iraq not by the contractor or supplier itself, but rather by its Government. Typically, the Government negotiated on behalf of all of the contracting parties from the country concerned who were in a similar situation. The deferred payment arrangements with Iraq were commonly entered into under a variety of forms, including complicated crude oil barter arrangements under which Iraq would deliver certain amounts of crude oil to a foreign State to satisfy consolidated debts; the foreign State then would sell the oil and, through its central bank, credit particular contractors' accounts." (S/AC.26/1998/7, paragraph 93).
>
> "Iraq's debts were typically deferred by contractors who could not afford to "cut their losses" and leave, and thus these contractors continued to work in the hope of eventual satisfaction and continued to amass large credits with Iraq. In addition, the payment terms were deferred for such long periods that the debt servicing costs alone had a significant impact on the continued growth of Iraq's foreign debt." (S/AC.26/1998/7, paragraph 94).

72. This Panel agrees.

(b) Application of the "old debt" analysis

73. In the application of this analysis to claims other than those considered by the "E2" Panel, there are two aspects which are worth mentioning.

74. The first is that the problem does not arise where the actual work has been performed after 2 May 1990. The arrangement deferring payment is irrelevant to the issue. The issue typically resolves itself in these cases into one of proof of the execution of the work, the quantum, the non payment and causation.

75. The second concerns the ambit of the above analysis. As noted above, the claims which led to the above analysis arose out of "non-commercial"

arrangements. They were situations where the original terms of payment entered into between the parties had been renegotiated during the currency of the contract or the negotiations or renegotiations were driven by inter-governmental exchanges. Such arrangements were clearly the result of the impact of Iraq's increasing international debt.

76. Thus one can see underlying the "E2" Panel's analysis two important factors. The first was the subsequent renegotiation of the payment terms of an existing contract to the detriment of the claimant (contractor). The second was the influence on contracts of the transactions between the respective governments. In both cases, a key element underlying the arrangements must be the impact of Iraq's mountain of old debt.

77. In the view of this Panel, where either of these factors is wholly or partially the explanation of the "loss" suffered by the claimant, then that loss or the relevant part of it is outside the jurisdiction of the Commission and cannot form the basis of recommendation by a panel. It is not necessary that both factors be present. A contract that contained deferment provisions as originally executed would still be caught by the "arising prior to" rule if the contract was the result of an inter-governmental agreement driven by the exigencies of Iraq's financial problems. It would not be a commercial transaction so much as a political agreement, and the "loss" would not be a loss falling within the jurisdiction of the Commission.

4. Losses arising as a result of unpaid retention monies

78. The claims before this Panel include requests for compensation for what could be described as another form of deferred payment, namely unpaid retention monies.

79. Under many if not most construction contracts, provision is made for the regular payment to the contractor of sums of money during the performance of the work under the contract. The payments are often monthly, and often calculated by reference to the amount of work that the contractor has done since the last regular payment was calculated.

80. Where the payment is directly related to the work done, it is almost invariably the case that the amount of the actual (net) payment is less than the contractual value of the work done. This is because the employer retains in his own hands a percentage (usually 5 per cent or 10 per cent and with or without an upper limit) of that contractual value. (The same approach usually obtains as between the contractor and his subcontractors.) The retained amount is often called the "retention" or the "retention fund". It builds up over time. The less work the contractor carries out before the project comes to an early halt, the smaller the fund.

81. The retention is usually payable in two stages, one at the commencement of the maintenance period, as it is often called, and the other at the end. The maintenance period usually begins when the employer

first takes over the project, and commences to operate or use it. Thus the work to which any particular sum which is part of the retention fund relates may have been executed a very long time before the retention fund is payable.

82. Retention fund provisions are very common in the construction world. The retention fund serves two roles. It is an encouragement to the contractor to remedy defects appearing before or during the maintenance period. It also provides a fund out of which the employer can reimburse itself for defects that appear before or during the maintenance period which the contractor has, for whatever reason, failed or refused to make good.

83. In the claims before this Panel, events - in the shape of Iraq's invasion and occupation of Kuwait - have intervened. The contract has effectively come to an end. There is no further scope for the operation of the retention provisions. It follows that the contractor, through the actions of Iraq, has been deprived of the opportunity to recover the money. In consequence the claims for retention fall within the jurisdiction of the Commission.

84. In the light of the above considerations it seems to this Panel that the situation in the case of claims for retention is as follows:

(a) The evidence before the Commission may show that the project was in such trouble that it would never have reached a satisfactory conclusion. In such circumstances, there can be no positive recommendation, principally because there is no direct causative link between the loss and the invasion and occupation of Kuwait.

(b) Equally the evidence may show that the project would have reached a conclusion, but that there would have been problems to resolve. Accordingly the contractor would have had to expend money resolving those problems. That potential cost would have to be deducted from the claim for retention; and accordingly the most convenient course would be to recommend an award to the contractor of a suitable percentage of the unpaid retention.

(c) Finally, on the evidence it may be the case that there is no reason to believe or conclude that the project would have gone other than satisfactorily. In those circumstances, it seems that the retention claim should succeed in full.

5. Guarantees, bonds, and like securities

85. Financial recourse agreements are part and parcel of a major construction contract. Instances are (a) guarantees - for example given by parent companies or through banks; (b) what are called "on demand" or "first demand" bonds (hereinafter "on demand bonds") which support such matters as bidding and performance; and (c) guarantees to support advance

payments. (Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different category. As to these, see paragraphs 95 to 102, infra).

86. Financial recourse arrangements give rise to particular problems when it comes to determining the claims filed in the population of construction and engineering claims. A convenient and stark example is that of the on demand bond.

87. The purpose of an on demand bond is to permit the beneficiary to obtain monies under the bond without having to prove default on the part of the other party - namely, in the situations under discussion here, the contractor executing the work. Such a bond is often set up by way of a guarantee given by the contractor or its parent to its own bank in its home State. That bank gives an identical bond to a bank (the second bank) in the State of the employer under the construction contract. In its turn, the second bank gives an identical bond to the employer. This leaves the employer, at least theoretically, in the very strong position of being able, without having to prove any default on the part of the contractor, to call down a large sum of money which will be debited to the contractor.

88. Of course, the contractor's bank will have two arrangements in place. First, an arrangement whereby it is secured as to the principal sum, the subject of the bond, in case the bond is called. Second, it will have arranged to exact a service charge, typically raised quarterly, half-yearly or annually.

89. Many claimants have raised claims in respect of the service charges; and also in respect of the principal sums. The former are often raised in respect of periods of years measured from the date of Iraq's invasion and occupation of Kuwait. The latter have, hitherto at least, been cautionary claims, in case the bonds are called in the future.

90. This Panel approaches this issue by observing that the strength of the position given to the employer by the on demand bond is sometimes more apparent than real. This derives from the fact that the courts of some countries are reluctant to enforce payment of such bonds if they feel that there is serious abuse by the employer of its position. For example, where there is a persuasive allegation of fraud, some courts will be prepared to injunct the beneficiary from making a call on the bond, or one or other of the banks from meeting the demand. It is also the case that there may be remedies for the contractor in some jurisdictions when the bonds are called in circumstances that are clearly outside the original contemplation of the parties.

91. The Panel notes that most if not all contracts for the execution of major construction works by a contractor from one country in the territory of another country will have clauses to deal with war, insurrection or civil disorder. Depending on the approach of the relevant governing law to

such matters, these provisions, if triggered, may have a direct or indirect effect on the validity of the bond. Direct, if under the relevant legal regime, the effects of the clause in the construction contract apply also to the bond; indirect if the termination or modification of the underlying obligation (the construction contract) gives rise to the opportunity to seek a forum-driven modification or termination of the liabilities under the bond.

92. In addition, the simple passage of time is likely to give rise to the right to treat the bond obligation as expired or unenforceable, or to seek a forum-driven resolution to the same effect.

93. In sum, and in the context of Iraq's invasion and occupation of Kuwait and the time which has passed since then, it seems to this Panel that it is highly unlikely that on demand bond obligations of the sort this Panel has seen in the instalments it has addressed are alive and effective.

94. If that analysis is correct, then it seems to this Panel that claims for service charges on these bonds will only be sustainable in very unusual circumstances. Equally, claims for the principal will only be sustainable where the principal has in fact been irrevocably paid out and where the beneficiary of the bond had no factual basis to make a call upon the bond.

6. Export credit guarantees

95. Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different case to guarantees generally. These forms of financial recourse have names such as "credit risk guarantees". They are in effect a form of insurance, often underwritten by the government of the territory in which the contractor is based. They exist as part of the economic policy of the government in question, in order to encourage trade and commerce by its nationals abroad.

96. Such guarantees often have a requirement that the contractor must exhaust all local remedies before calling on the guarantee; or must exhaust all possible remedies before making a call.

97. Claims have been made by parties for:

(a) reimbursement of the premia paid to obtain such guarantees; and also for

(b) shortfalls between the amounts recovered under such guarantees and the losses said to have been incurred.

In the view of this Panel, one of these types of claim is misconceived; and the other is mis-characterised.

98. A claim for the premia is misconceived. A premium paid for any form of insurance is not recoverable unless the policy is avoided. Once the policy is in place, either the event that the policy is intended to embrace

occurs, or it does not. If it does, then there is a claim under the policy. If it does not then there is no such claim. In neither case does it seem to the Panel that the arrangements - prudent and sensible as they are - give rise to a claim for compensation for the premia. There is no "loss" properly so called or any causative link with Iraq's invasion and occupation of Kuwait.

99. Further, where a contractor has in fact been indemnified in whole or in part by such a body in respect of losses incurred as a result of Iraq's invasion and occupation of Kuwait, there is, to that extent, no longer any loss for which that contractor can claim to the Commission. Its loss has been made whole.

100. The second situation is that where a contractor claims for the balance between what are said to be losses incurred as a result of Iraq's invasion and occupation of Kuwait and what has been recovered from the guarantor.

101. Here the claim is mis-characterised. That balance may indeed be a claimable loss; but its claimability has nothing to do with the fact that the monies represent a shortfall between what has been recovered under the guarantee and what has been lost. Instead, the correct analysis should start from a review of the cause of the whole of the loss of which the balance is all that remains. The first step is to establish whether there is evidence to support that whole sum, that it is indeed a sum that the claimant has paid out or failed to recover; and that there is the necessary causation. To the extent that the sum is established, then to that extent the claim is prima facie compensable. However, so far as there has been reimbursement by the guarantor, the loss has been made good, and there is nothing left to claim for. It is only if there is still some qualifying loss, not made good, that there is room for a recommendation of this Panel.

102. Finally, there are the claims by the bodies granting the credit guarantees who have paid out sums of money. They entered into an insurance arrangement with the contractor. In consideration of that arrangement, they required the payment of premia. As before, either the event covered by the insurance occurred or it did not. In the former case, the Panel would have thought that the guarantor was contractually obliged to pay out; and in the latter case, not so. Whether any payments made in these circumstances give rise to a compensable claim is not a matter for this Panel. Such claims come within the population of claims allocated to the "E/F" Panel.

7. Frustration and force majeure clauses

103. Construction contracts, both in common law and under the civil law, frequently contain provisions to deal with events that have wholly changed the nature of the venture. Particular events which are addressed by such clauses include war, civil strife and insurrection. Given the length of time that a major construction project takes to come to fruition and the

sometimes volatile circumstances, both political and otherwise, in which such contracts are carried out, this is hardly surprising. Indeed, it makes good sense. The clauses make provision as to how the financial consequences of the event are to be borne; and what the result is to be so far as the physical project is concerned.

104. Such clauses give rise to two questions when it comes to the population of claims before this Panel. The first question is whether Iraq is entitled to invoke such clauses to reduce its liability. The second is whether claimants may utilise such clauses to support or enhance their recovery from the Commission.

105. As to the first question, the position seems to this Panel to be as follows. In the population of claims before the Commission, the frustrating or force majeure event will nearly always be the act or omission of Iraq itself. However, such a clause is designed to address events which, if they occurred at all, were anticipated to be wholly outside the control of both parties. It would be quite inappropriate for the causal wrongdoer to rely on such clause to reduce the consequences of its own wrongdoing.

106. But the second question then arises as to whether claimants can rely upon such clauses. An example of such reliance would be where the clause provides for the acceleration of payments which otherwise would not have fallen due. As to this question, one example of this sort of claim has been addressed and the answer categorically spelt out in the first report of the "E2" Panel as follows:

> "Second, [the Claimants] direct the Commission's attention to the clauses relating to "frustration" in the respective underlying contracts. The Claimants assert that in the case of frustration of contract, these clauses accelerate the payments due under the contract, in effect giving rise to a new obligation on the part of Iraq to pay all the amounts due and owing under the contract regardless of when the underlying work was performed. The Panel has concluded that claimants may not invoke such contractual agreements or clauses before the Commission to avoid the "arising prior to" exclusion established by the Security Council in resolution 687 (1991); consequently, this argument must fail." (S/AC.26/1998/7, paragraph 188).

107. The situation described above was one where the work that was the subject of the claim had been performed prior to Iraq's invasion and occupation of Kuwait, and, therefore, fell clearly foul of the "arising prior to" rule. However, the claimants, who had agreed on arrangements for delayed payment, sought to rely on the frustration clause to get over this problem. The argument was, as this Panel understands it, that the frustration clause was triggered by the events which had in fact occurred, namely Iraq's invasion and occupation of Kuwait. The frustration clause

provided for the accelerated payment of sums due under the contract. Payment of the sums had originally been deferred to dates which were still in the future at the time of the invasion and occupation; but the frustrating event meant that they became due during the time of, or indeed at the beginning of, Iraq's invasion and occupation of Kuwait. Accordingly, the payments had, in the event, become due within the period covered by the jurisdiction established by Security Council resolution 687 (1991). Therefore, a claim for the reimbursement of these payments could be entertained by the "E2" Panel.

108. It was this claim that the "E2" Panel rejected. This Panel agrees.

109. There remains the situation where the frustration clause is being used by claimants to enhance a claim, other than by way of circumventing the "arising prior to" rule, for example, where the acceleration delivered by the frustration clause is put forward to seek to bring into the period within the jurisdiction of the Commission payments which would otherwise have been received, under the contract, well after the liberation of Kuwait, and therefore would not otherwise be compensable.

110. In the view of this Panel, such claims would similarly fail. In this case, as in the case addressed by the "E2" Panel, claimants are seeking to use the provisions of private contracts to enhance the jurisdiction granted by Security Council resolution 687 (1991) and defined by jurisprudence developed by the Commission. That is not an appropriate course. It is not open to individual entities by agreement or otherwise, to modify the jurisdiction of the Commission.

J. Claims for overhead and "lost profits"

1. General

111. Any construction project can be broken down into a number of components. All of these components contribute to the pricing of the works. In this Panel's view, it is helpful for the examination of these kinds of claims to begin by rehearsing in general terms the way in which many contractors in different parts of the world construct the prices that ultimately appear in the construction contracts they sign. Of course, there is no absolute rule as to this process. Indeed, it is unlikely that any two contractors will assemble their bids in exactly the same way. But the constraints of construction work and the realities of the financial world impose a general outline from which there will rarely be a substantial deviation.

112. Many of the construction contracts encountered in the claims submitted to this Panel contain a schedule of rates or a "bill of quantities". This document defines the amount to be paid to the contractor for the work performed. It is based on previously agreed rates or prices. The final contract price is the aggregate value of the work calculated at the quoted

rates together with any variations and other contractual entitlements and deductions which increase or decrease the amount originally agreed.

113. Other contracts in the claims submitted to this Panel are lump sum contracts. Here the schedule of rates or bill of quantities has a narrower role. It is limited to such matters as the calculation of the sums to be paid in interim certificates and the valuation of variations.

114. In preparing the schedule of rates, the contractor will plan to recover all of the direct and indirect costs of the project. On top of this will be an allowance for the "risk margin". In so far as there is an allowance for profit it will be part of the "risk margin". However, whether or not a profit is made and, if made, in what amount, depends obviously on the incidence of risk actually incurred.

115. An examination of actual contracts combined with its own experience of these matters has provided this Panel with guidelines as to the typical breakdown of prices that may be anticipated on construction projects of the kind relevant to the claims submitted to this Panel.

116. The key starting point is the base cost - the cost of labour, materials and plant - in French the "prix secs." In another phrase, this is the direct cost. The direct cost may vary, but usually represents 65 to 75 per cent of the total contract price.

117. To this is added the indirect cost - for example the supply of design services for such matters as working drawings and temporary works by the contractor's head office. Typically, this indirect cost represents about 25 to 30 per cent of the total contract price.

118. Finally, there is what is called the "risk margin" - the allowance for the unexpected. The risk margin is generally in the range of between barely above zero and five per cent of the total contract price. The more smoothly the project goes, the less the margin will have to be expended. The result will be enhanced profits, properly so called, recovered by the contractor at the end of the day. The more the unexpected happens and the more the risk margin has to be expended, the smaller the profit will ultimately be. Indeed, the cost of dealing with the unexpected or the unplanned may equal or exceed the risk margin, leading to a nil result or a loss.

119. In the view of the Panel, it is against this background that some of the claims for contract losses need to be seen.

2. Head office and branch office expenses

120. These are generally regarded as part of the overhead. These costs can be dealt with in the price in a variety of ways. For example, they may be built into some or all of the prices against line items; they may be provided for in a lump sum; they may be dealt with in many other ways. One

aspect, however, will be common to most, if not all, contracts. It will be the intention of the contractor to recover these costs through the price at some stage of the execution of the contract. Often the recovery has been spread through elements of the price, so as to result in repayment through a number of interim payments during the course of the contract. Where this has been done, it may be said that these costs have been amortised. This factor is relevant to the question of double-counting (see paragraph 123, infra).

121. If therefore any part of the price of the works has been paid, it is likely that some part of these expenses has been recovered. Indeed, if these costs have been built into items which are paid early, a substantial part or even all of these costs may have been recovered.

122. If these items were the subject of an advance payment, again they may have been recovered in their entirety at an early stage of the project. Here of course there is an additional complication, since the advance payments will be credited back to the employer - see paragraph 66, supra - during the course of the work. In this event, the Panel is thrown back onto the question of where in the contractor's prices payment for these items was intended to be.

123. In all of these situations, it is necessary to avoid double-counting. By this the Panel means the situation where the contractor is specifically claiming, as a separate item, elements of overhead which, in whole or in part, are already covered by the payments made or claims raised for work done.

124. The same applies where there are physical losses at a branch or indeed a site office or camp. These losses are properly characterised, and therefore claimable, if claimable at all, as losses of tangible assets.

3. Loss of profits on a particular project

125. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

126. As will be seen from the observations at paragraphs 111 to 119, supra, the expression "lost profits" is an encapsulation of quite a complicated concept. In particular, it will be appreciated that achieving profits or suffering a loss is a function of the risk margin and the actual event.

127. The qualification of "margin" by "risk" is an important one in the context of construction contracts. These contracts run for a considerable period of time; they often take place in remote areas or in countries where the environment is hostile in one way or another; and of course they are subject to political problems in a variety of places - where the work is done, where materials, equipment or labour have to be procured, and along

supply routes. The surrounding circumstances are thus very different and generally more risk prone than is the case in the context of, say, a contract for the sale of goods.

128. In the view of this Panel it is important to have these considerations in mind when reviewing a claim for lost profits on a major construction project. In effect one must review the particular project for what might be called its "loss possibility". The contractor will have assumed risks. He will have provided a margin to cover these risks. He will have to demonstrate a substantial likelihood that the risks would not occur or would be overcome within the risk element so as to leave a margin for actual profit.

129. This approach, in the view of this Panel, is inherent in the thinking behind paragraph 5 of Governing Council decision 15. This paragraph expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

130. In the light of the above analysis, and in conformity with the two Governing Council decisions cited above, this Panel requires the following from those construction and engineering claimants that seek to recover for lost profits. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. It is not sufficient to prove that there would have been a "profit" at some stage before the completion of the project. Such a proof would only amount to a demonstration of a temporary credit balance. This can even be achieved in the early stages of a contract, for example where the pricing has been "front-loaded" for the express purpose of financing the project.

131. Instead, the claimant must lodge sufficient and appropriate evidence to show that the contract would have been profitable as a whole. Such evidence would include projected and actual financial information relating to the relevant project, such as audited financial statements, budgets, management accounts, turnover, original bids and tender sum analyses, time schedules drawn up at the commencement of the works, profit/loss statements, finance costs and head office costs prepared by or on behalf of the claimant for each accounting period from the first year of the relevant project to March 1993. The claimant should also provide: original calculations of profit relating to the project and all revisions to these calculations made during the course of the project; management reports on actual financial performance as compared to budgets that were prepared during the course of the project; evidence demonstrating that the project

proceeded as planned, such as monthly/periodic reports, planned/actual time schedules, interim certificates or account invoices, details of work that was completed but not invoiced by the claimant, details of payments made by the employer and evidence of retention amounts that were recovered by the claimant. In addition, the claimant should provide evidence of the percentage of the works completed at the time work on the project ceased.

4. Loss of profits for future projects

132. Some claimants say they would have earned profits on future projects, not let at the time of Iraq's invasion and occupation of Kuwait. Such claims are of course subject to the sorts of considerations set out by this Panel in its review of claims for lost profits on individual projects. In addition, it is necessary for such a claimant to overcome the problem of remoteness. How can a claimant be certain that it would have won the opportunity to carry out the projects in question? If there was to be competitive tendering, the problem is all the harder. If there was not to be competitive tendering, what is the basis of the assertion that the contract would have come to the claimant?

133. Accordingly, in the view of this Panel, for such a claim to warrant a recommendation, it is necessary to demonstrate by sufficient documentary and other appropriate evidence a history of successful (i.e., profitable) operation, and a state of affairs which warrants the conclusion that the hypothesis that there would have been future profitable contracts is well founded. Among other matters, it will be necessary to establish a picture of the assets that were being employed so that the extent to which those assets would continue to be productive in the future can be determined. Balance sheets for previous years will have to be produced, along with relevant strategy statements or like documents which were in fact utilised in the past. The current strategy statement will also have to be provided. In all cases, this Panel will be looking for contemporaneous documents rather than ones that have been formulated for the purpose of the claim; although the latter may have a useful explanatory or demonstrational role.

134. Such evidence is often difficult to obtain; and accordingly in construction cases such claims will only rarely be successful. And even where there is such evidence, the Panel is likely to be unwilling to extend the projected profitability too far into the future. The political exigencies of work in a troubled part of the world are too great to justify looking many years ahead.

K. Loss of monies left in Iraq

1. Funds in bank accounts in Iraq

135. Numerous claimants seek to recover compensation for funds on deposit in Iraqi banks. Such funds were of course in Iraqi dinars and were subject to exchange controls.

136. The first problem with these claims is that it is often not clear that there will be no opportunity in the future for the claimant to have access to and to use such funds. Indeed, many claimants, in their responses to interrogatories or otherwise have modified their original claims to remove such elements, as a result of obtaining access to such funds after the initial filing of their claim with the Commission.

137. Second, for such a claim to succeed it would be necessary to establish that in the particular case, Iraq would have permitted the exchange of such funds into hard currency for the purposes of export. For this, appropriate evidence of an obligation to this effect on the part of Iraq is required. Furthermore, this Panel notes that the decision to deposit funds in banks located in particular countries is a commercial decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved.

138. This Panel, in analysing the claims presented to it to date concludes that, in most cases, it will be necessary for a claimant to demonstrate (in addition to such matters as loss and quantum) that:

(a) the relevant Iraqi entity was under a contractual or other specific duty to exchange those funds for convertible currencies;

(b) Iraq would have permitted the transfer of the converted funds out of Iraq; and

(c) this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

139. Absent proof of these aspects of the matter, it is difficult to see how the claimant can be said to have suffered any "loss". If there is no loss, this Panel is unable to recommend compensation.

2. Petty cash

140. Exactly the same considerations apply to claims for petty cash left in Iraq in Iraqi dinars. These monies were left in the offices of claimants when they departed from Iraq. The circumstances in which the money was left behind vary somewhat; and the situation which thereafter obtained also varies - some claimants contending that they returned to Iraq but the monies were gone; and others being unable to return to Iraq and establish the position. In these different cases, the principle seems to this Panel to be the same. Claimants in Iraq needed to have available sums (which could be substantial) to meet liabilities which had to be discharged in cash. These sums necessarily consisted of Iraqi dinars. Accordingly, absent evidence of the same matters as are set out in paragraph 138, supra, it will be difficult to establish a "loss", and in those circumstances, this Panel is unable to recommend compensation.

3. Customs deposits

141. In this Panel's understanding, these sums are paid, nominally at least, as a fee for permission to effect a temporary importation of plant, vehicles or equipment. The recovery of these deposits is dependent on obtaining permission to export the relevant plant, vehicles and equipment.

142. The Panel further understands that such permission was hard to obtain in Iraq prior to Iraq's invasion and occupation of Kuwait. Accordingly, although defined as a temporary exaction, it was often permanent in fact, and no doubt contractors experienced in the subtleties of working in Iraq made suitable allowances. And no doubt they were able to, or expected to, recover these exactions through payment for work done. Once the invasion and occupation of Kuwait had occurred, obtaining such permission to export became appreciably harder. Indeed, given the trade embargo, a necessary element would have been the specific approval of the Security Council.

143. In the light of the foregoing, it seems to the Panel that claims to recover these duties need to be supported by sufficient evidentiary material, going to the issue of whether, but for Iraq's invasion and occupation of Kuwait, such permission would, in fact or on a balance of probabilities, have been forthcoming.

144. Absent such evidence and leaving aside any question of double-counting, (see paragraph 123, supra), the Panel is unlikely to be able to make any positive recommendations for compensating unrecovered customs deposits made for plant, vehicles and equipment used at construction projects in Iraq.

L. Tangible property

145. With reference to losses of tangible property located in Iraq, decision 9 provides that where direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation (decision 9, paragraph 12). Typical actions of this kind would have been the expropriation, removal, theft or destruction of particular items of property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation. Decision 9 furthermore provides that in a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from Iraq's invasion and occupation (decision 9, paragraph 13).

146. Many of the construction and engineering claims that come before this Panel are for assets that were confiscated by the Iraqi authorities in 1992 or 1993. Here the problem is one of causation. By the time of the event, Iraq's invasion and occupation of Kuwait was over. Liberation was a year or more earlier. Numerous claimants had managed to obtain access to their sites to establish the position that obtained at that stage. In the cases

the subject of this paragraph, the assets still existed. However, that initially satisfactory position was then overtaken by a general confiscation of assets by Iraqi authorities. While it sometimes seems to have been the case that this confiscation was triggered by an event which could be directly related to Iraq's invasion and occupation of Kuwait, in the vast majority of the claims that this Panel has seen, this was not the case. It was simply the result of a decision on the part of the authorities to take over these assets. This Panel has difficulty in seeing how these losses were caused by Iraq's invasion and occupation of Kuwait. On the contrary, it appears that they stem from an wholly independent event and accordingly are outside the jurisdiction of the Commission.

M. Payment or relief to others

147. Paragraph 21(b) of decision 7 specifically provides that losses suffered as a result of "the departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Consistent with decision 7, therefore, the Panel finds that evacuation and relief costs incurred in assisting employees in departing from Iraq are compensable to the extent proven.

148. Paragraph 22 of Governing Council decision 7 provides that "payments are available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

149. In the Fourth Report, this Panel found that the costs associated with evacuating and repatriating employees between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation, are in principle, compensable.

150. Many claimants do not provide a documentary trail detailing to perfection the expenses incurred in caring for their personnel and transporting them (and, in some instances, the employees of other companies who were stranded) out of a theatre of hostilities.

151. In these cases this Panel considers it appropriate to accept a level of documentation consistent with the practical realities of a difficult, uncertain and often hurried situation, taking into account the concerns necessarily involved. The loss sustained by claimants in these situations is the very essence of the direct loss suffered which is stipulated by Security Council resolution 687 (1991). Accordingly, the Panel uses its best judgement, after considering all relevant reports and the material at its disposal, to arrive at an appropriate recommendation for compensation.

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the fifteenth instalment of "E3" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fifteenth instalment of "E3" claims, covering 16 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in table 5 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Austria	-	1	6,522,682	nil
Croatia	-	1	8,440,131	nil
Germany	1	1	112,826	27,916

1/ The text of the report appears in document S/AC.26/2000/20.

India	-	1	25,000	nil
Italy	-	1	6,592,022	nil
Japan	2	2	211,094	17,576
Sweden	-	1	169,150	nil
United Kingdom	1	-	255,985	37,036
United States	2	1	1,594,855	14,542
Yugoslavia, Federal Republic of	1	-	3,137,264	399,904
Total	7	9	27,061,009	496,974

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec. 100 (2000)),

4. Recalls that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

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COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE EIGHTH INSTALMENT OF "E4" CLAIMS

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Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti private sector corporations and entities, other than oil sector and environmental claimants, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. An eighth instalment of 139 "E4" claims was submitted to the Panel on 31 January 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the eighth instalment claims.

I. OVERVIEW OF THE EIGHTH INSTALMENT CLAIMS

4. The eighth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The eighth instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 53,740,646 (approximately USD 185,953,792). The claimants also filed claims for interest totalling KWD 1,614,684 (approximately USD 5,587,142) and claim preparation costs aggregating KWD 281,615 (approximately USD 974,446).

6. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 180 days of the date on which the eighth instalment claims were submitted to the Panel.

7. All of the claimants in the eighth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants conducted trading operations dealing in a variety of goods. Some claimants were engaged in manufacturing and service industries. A small number of claimants are non-profit organizations or trade associations.

8. The two most common loss types asserted by claimants in this instalment are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. Claimants have also sought

compensation for uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

II. THE PROCEEDINGS

9. Before the eighth instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. Originally 10 claims presented formal deficiencies and the secretariat issued notifications to these claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports 28 and 29 dated 23 July 1999 and 28 October 1999, respectively, to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the eighth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the eighth instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

15. By its procedural order dated 31 January 2000, the Panel gave notice of its intention to complete its review of the eighth instalment claims and submit its report and recommendations to the Governing Council within 180 days of 31 January 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

16. Pursuant to article 34 of the Rules, additional information and evidence was requested from the claimants in order to assist the Panel in its review of the claims. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information and evidence were directed through the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). These requests were made in relation to the entire "E4" claims population and not just the eighth instalment claims.

17. The requests for additional information and evidence are described in prior "E4" reports, e.g., paragraphs 21-26 of the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) (the "Second 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

18. Pursuant to article 34 of the Rules, the secretariat also sought specific clarifications from two claimants in the eighth instalment, i.e., Al-Rabiah Construction Company W.L.L. and Ward Al-Rabeia Foodstuff and Consumables Goods Co. W.L.L. The Panel has considered the responses submitted by these claimants.

19. An additional level of verification was performed to determine if related claimants filed duplicate claims. This review is described in paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report").

20. During the Panel's review of claims in this instalment, the secretariat informed the Panel of the potential overlap between some claims in this instalment and certain individual claims for business losses filed before the

Commission. This issue has been identified and reported to the Governing Council, in connection with the initial review of business loss claims filed by category "D" claimants, in report no. 30, dated 17 February 2000, submitted by the Executive Secretary of the Commission in accordance with article 16 of the Rules.

21. At the Panel's request, the Secretariat conducted a review of the Claims Database and identified 20 claims in this instalment of "E4" claims, which present a potential for overlap with other individual claims for business losses filed before the Commission. These 20 "E4" claims have been listed in annex III to this report.

22. The Panel considers that additional time is required to determine the nature and extent of the overlap between these "E4" claims and the potentially overlapping individual claims for business losses. At this stage, to allow time for the additional claim development and review required, the Panel has recommended that the claims listed in annex III be deferred to a later instalment of category "E4" claims. Therefore, the Panel has made no findings concerning the claims listed in annex III to this report. In this report, subsequent references to the eighth instalment claims are to the remaining 119 claims listed in annex I.

23. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the eighth instalment claims had been adequately developed and that oral proceedings were not required to explore such issues further.

III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

24. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment is the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

25. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefor are set out in the annexes to this report.

26. Before discussing the Panel's specific recommendations for compensating the eighth instalment claims, it is important to restate that the Panel's

approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

IV. THE CLAIMS

27. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

A. Real property

28. Twenty claimants in this instalment filed claims aggregating KWD 1,985,481 (approximately USD 6,870,176) for loss of real property. These claims sought compensation for damage to a number of owned and rented premises in Kuwait.

29. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

30. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

31. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. Similar adjustments were made by the Panel in cases of unforced "betterment", as explained in paragraph 97 of the First "E4" Report.

32. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant's failure to repair or replace the affected property. Where such explanation was absent the Panel adjusted the claim to offset the "risk of overstatement" created by this shortcoming.

33. The Panel's recommendations on real property losses are summarized in annex II.

B. Tangible property, stock, cash and vehicles

34. Tangible property losses are claimed by a majority of the eighth instalment claimants. The claimed losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 29,604,208 (approximately USD 102,436,706).

35. With regard to the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report.

36. The claimants in this instalment generally submitted the same type of evidence encountered by the Panel in earlier "E4" instalments in relation to claims for loss of tangible property. (See the Second 'E4' Report, paras. 55-56.)

37. Abdulla Sayid Rajab Al-Rifai & Sons General Trading & Cont. Co. submitted a claim for loss of fixed assets. The claimant submitted copies of purchase invoices for some of the assets stated to have been lost and an employee's witness statement stating that the assets had been looted. The claim was based on the net book value of the assets on 1 August 1990.

38. A review of the claimant's audited financial statements showed that the amount claimed was consistent with the net book value of fixed assets preceding Iraq's invasion of Kuwait. However, the post-liberation accounts also showed fixed assets at levels that were similar to the pre-invasion levels of fixed assets. The purchase invoices submitted did not support an assumption that the net book value of assets in the post-liberation accounts related to asset purchases made after the liberation of Kuwait. The extraordinary loss recorded by the claimant's auditors in the post-liberation accounts also did not disclose or substantiate any loss of fixed assets. The fact of loss was therefore based solely on a witness statement with no corroboration in the audited financial statements. In view of the insufficient evidence relating to the fact of loss the Panel has recommended no compensation for this item.

39. Al Masar Co. for Trading Building Materials filed a claim for tangible property losses relating to the loss of tools and instruments that had been mortgaged under a bank loan agreement. A copy of this loan agreement was provided and the individual assets claimed were itemised on the loan agreement. However, these items were not shown as fixed assets or stock in the claimant's financial records. The claimant provided no information concerning the basis on which the assets had been valued and there was

insufficient evidence for the Panel to perform an independent valuation of the assets. The claimant also did not provide sufficient evidence to substantiate the extent of the loss claimed or the treatment of the claimant's obligations and the mortgage under the bank loan following the liberation of Kuwait. In view of the insufficient evidence submitted the Panel has recommended no compensation for this item.

40. For most claimants the existence, ownership and value of stocks lost were supported by copies of their audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report. A few claimants sought to rely mainly on employee or related party witness statements to establish the fact of loss of stock. Where the fact of loss of stock was not supported by sufficient evidence, such as extraordinary losses in the claimant's audited post-liberation financial statements, the Panel has recommended no compensation for such losses.

41. Fakher Al-Kuwait Readymade submitted a claim for loss of stock. In its roll-forward calculation to determine the stock held on 1 August 1990, the claimant used the value of sales shown in its audited financial statements for the first seven months of 1990. The claimant also provided sales invoices for the same period. The sales invoices showed sales that were much higher than the value used in the roll-forward calculation. The Panel revised the roll-forward calculation using the value of sales supported by the sales invoices and the claimant's historical gross profit margin. The revised calculation indicated that the claimant would not have held any stock on 1 August 1990. The claimant also stated that a stock count was carried out on 31 July 1990. However the claimant did not provide any explanation for carrying out a stock count on that date, when the claimant's normal financial year ended in December. In view of the insufficient evidence submitted the Panel has recommended no compensation for the stock loss claimed.

42. Al-Rownaq Electrical Equipment and Contracting Co., an electrical equipment retailer, filed a claim for loss of stock. The claimant, incorporated in April 1989, submitted purchase invoices dated between January and July 1990 in support of its claim. The claimant also submitted witness statements from related parties to the effect that the claimant had not made any sales since the date of its incorporation.

43. The Panel noted that the claimant had been incorporated for over a year and had accumulated excessive amounts of stock in the seven months preceding the invasion. Given the volume of stock purchases, the Panel found that the claimant did not sufficiently explain or support its assertion that it did not sell any of the stock that had been accumulated over this seven-month period. The claimant did not provide any financial statements. The claimant also did not provide any other independent documents corroborating the fact

or extent of stock losses claimed. In the circumstances and because of the insufficient evidence submitted the Panel has recommended no compensation for this claim.

44. As was the case in prior instalments of "E4" claims, claims for loss of goods in transit related to goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. Successful claimants were able to submit sufficient proof of payment for the goods and establish the ownership, existence and loss of the goods from certificates issued by the Kuwaiti port authorities or shipping agents.

45. A majority of the claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by sufficient contemporaneous evidence, establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no compensation.

46. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses.

47. Al Naqeeb & Khattar Co. asserted a claim for loss of commercial and motor vehicles. The claimant submitted photographs showing certain damaged vehicles. However, the claimant did not provide any deregistration certificates for these vehicles, despite requests for these documents (see para. 17 above). The claimant's audited financial statements for the period following the liberation of Kuwait also did not reflect the loss of any vehicles. In view of the insufficient evidence submitted, the Panel has recommended no compensation for this loss of vehicles claim.

48. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

C. Payment or relief to others

49. One claimant in this instalment submitted a KWD 15,183 (approximately USD 52,536) claim for payment or relief to others.

50. This claim submitted by Hamad Al-Mutawa Trading Establishment Hamad Khalid Al-Mutawa & Partners (W.L.L.) was for termination indemnity payments made to various employees. When reviewing this claim for payment or relief to others, the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports. (See, for example, the Second "E4" Report, paras. 70-74.)

51. In relation to the claim for termination indemnities, the Panel noted that the claimant only provided a schedule listing the names of individual employees stated to have been paid the indemnities. The claimant did not provide any documents to establish that the payments were actually made or that the individuals identified were the claimant's employees just before Iraq's invasion of Kuwait. In view of the insufficient evidence submitted the Panel has recommended no compensation for this claim.

52. The Panel's recommendation on the payment or relief to others claim is summarized in annex II.

D. Loss of profits

53. Seventy-seven per cent of the claimants in this instalment submitted claims for loss of profits aggregating KWD 13,100,020 (approximately USD 45,328,789).

54. Four significant legal and factual issues raised in the first instalment claims were all raised in the claims in this instalment. These relate to the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

55. Despite several requests, some claimants in the eighth instalment did not provide annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. The Panel noted that in some cases the failure to submit some accounts was sufficiently explained, for example, where the claimant had commenced trading in the period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

56. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

57. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

58. Al Behar for Loading Voiding Ships and Delivery Cargo Co. was incorporated shortly before Iraq's invasion of Kuwait. This claimant filed a

claim for loss of profits that the claimant stated it would have made supplying labourers under two contracts. In view of the claimant's date of incorporation evidence of historical financial performance was not available. The claimant did not submit any other evidence to establish that the two contracts would have been executed profitably. Due to the insufficient evidence submitted, in relation to the claimant's ability to execute the contracts profitably, the Panel has recommended no compensation for this claim.

59. The Panel's recommendations on loss of profits claims are summarized in annex II.

E. Receivables

60. Ten claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KWD 2,266,792 (approximately USD 7,843,571). All of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

61. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The Panel reiterates its determination on this matter as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

62. The eighth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

63. As discussed above, the Panel has recommended no compensation for claims that relied on the mere assertion that uncollected debts were *ipso facto* uncollectible because the debtors did not return to Kuwait. Nearly all the claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see para. 17 above). While a number of responses were received from claimants none satisfied the above criteria.

64. The Panel's recommendations on claims for receivables are summarized in annex II.

F. Restart costs

65. Eleven claimants in this instalment asserted claims aggregating KWD 188,207 (approximately USD 651,235) for restart costs. The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report.

66. Kuwait National Construction Building Materials Manufacturing & Trading Co. (K.S.C.) instructed a fund management company in Germany to form a trust and transfer its assets located in Germany into this trust. The claimant stated that this measure was undertaken to protect the assets from being acquired by the Iraqi authorities and sought compensation for costs incurred in relation to this trusteeship arrangement. The claimant did not submit any evidence to establish that the assets located in Germany were under any real threat of being acquired by the Iraqi authorities. The Panel concluded that the decision to create the trusteeship arrangement in Germany was an independent business decision that was not a direct result of Iraq's invasion and occupation of Kuwait. For this reason, the Panel has recommended no compensation for this claim.

67. The Panel's recommendations on restart costs are summarized in annex II.

G. Other losses

68. Seven claimants in this instalment asserted claims aggregating KWD 695,764 (approximately USD 2,407,487) for other losses.

69. Mohammed Sha'alan & Wafic Berry Co. W.L.L. Textile & Readywear submitted a claim for loss of premiums paid on leases for two premises that were destroyed. The claimant indicated that these amounts were paid to obtain leases for the properties and that these sums were in addition to normal rent payments. The claimant submitted no documents, other than a witness statement, to substantiate the actual payment of the premiums. The claimant also provided no documents to demonstrate the extent of damage to the premises or explain why the premises had not been subsequently repaired. In view of the insufficient evidence relating to the claim the Panel has recommended no compensation in this case.

70. Kuwait and Middle East Financial Investment Company filed a claim for costs associated with setting up and running foreign offices during Iraq's invasion and occupation of Kuwait and for a short period thereafter. The Panel found such expenses to be incremental costs incurred as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has recommended compensation for these expenses to the extent the claimant submitted sufficient evidence to establish that the expenses were incurred for the foreign offices. However, the Panel adjusted its recommended award to offset

the "risk of overstatement" associated with evidentiary shortcomings in relation to the claimant's efforts to mitigate its loss.

71. Tola Gold Company Fatema Hussein Al Eassa & Partners filed a claim in relation to bank interest and commissions paid on certain letters of guarantee. Prior to 2 August 1990 the claimant was delivered a consignment of gold against two letters of guarantee issued by local banks. The letters were valid until 3 March 1991 and the claimant stated that no payment was made on delivery, as it was the claimant's normal procedure to effect payment on the due date. The claimant stated that due to Iraq's invasion of Kuwait, the beneficiary cashed in the letters of guarantee soon after 2 August 1990. The claimant's accounts were subsequently debited for the guarantee amount and interest and commissions were charged for the period from 1 August 1990 to 21 December 1991. The claimant did not provide the guarantee agreements or any other documents to substantiate its statement that payment would not normally have been made at the time of delivery. Further, since the gold had been delivered, the Panel found that it would be reasonable for the beneficiary to have demanded payment any time after delivery in the normal course of business. For these reasons, the Panel found that the claimant had not sufficiently established that the amount claimed represented losses incurred as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has therefore recommended no compensation for this claim.

72. The claim of Gulf Colour Film Lab Company contained an arithmetical error due to which the claim value set out on Form E was overstated by a sum of KWD 9,999. For reporting purposes this amount was reclassified to other losses and no award has been recommended in relation thereto.

73. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, for example, the Second "E4" Report, para. 108 dealing with the treatment of prepaid expenses.)

74. The Panel's recommendations on other losses are summarized in annex II.

V. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

75. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

B. Claim preparation costs

76. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

VI. RECOMMENDED AWARDS

77. Based on the foregoing, the awards recommended by the Panel for claimants in the eighth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by one KWD.

Geneva, 30 June 2000

(*Signed*) Robert R. Briner
Chairman

(*Signed*) Alan J. Cleary
Commissioner

(*Signed*) Lim Tian Huat
Commissioner

Annex I

Recommended awards for eighth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00652	4003776	Ala Elddin Company for Construction Materials	34,010	33,510	22,798	78,877
E-00653	4003777	New Exhibition Company	382,002	336,931	230,465	797,457
E-00654	4003778	Al Tasahul Auto Drive Training Company	18,145	17,845	14,495	50,156
E-00656	4003779	Al-Rabiah Construction Company W.L.L.	1,025,800	1,020,050	510,892	1,767,792
E-00657	4003780	Sayed Hussain Sons & Co. Limited Partnership	1,116,417	946,931	529,284	1,829,362
E-00659	4003782	Ward Al-Rabeia Foodstuff and Consumables Goods Co. W.L.L.	2,665,504	2,382,574	1,060,511	3,669,368
E-00662	4003785	Kifan Shoes Company	80,502	79,002	39,583	136,764
E-00666	4003789	Al-Dibaj Al-Mutahida General Trading and Contacting	194,136	193,036	100,157	346,564
E-00667	4003790	Attiya & Al Showly Construction Materials Co. for Trading, Imp. & Exp.	480,957	479,607	165,082	571,218
E-00668	4003791	Al Wassan Decoration Company	479,760	478,760	400,766	1,384,857
E-00670	4003792	Al Mashreq Real Estate Co. (K.S.C.C.)	78,602	78,602	28,626	98,926
E-00671	4003793	Usaimi Building Materials Co. W.L.L.	97,068	95,957	52,391	181,284
E-00672	4003794	Maki & Matrouk Trading Company Partnership	103,526	94,887	40,349	139,616
E-00673	4003795	Mahatta Trading Company W.L.L.	62,495	61,745	44,404	153,613
E-00674	4003796	Manabe Al Khaleej for Imp. & Exp. Company	92,050	92,050	52,261	180,834
E-00675	4003797	Al-Ahleia Switchgear Company	2,873,978	2,873,978	1,966,412	6,801,802
E-00676	4003798	Al Rafraf for Ready Made Clothes & Luxurious Company	40,833	40,083	22,730	78,651
E-00677	4003799	Shlash & Sons General Contracts Shlash S. Alhajraf & Sons W.L.L.	832,385	831,325	245,388	848,682
E-00679	4003801	Mahdi Salem and Al Saeedy Transport and Customs Clearing Company	44,925	44,925	19,040	65,953

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00680	4003802	Al Ghunaim Trading Company	86,121	84,121	17,193	59,461
E-00681	4003803	Almeer Technical Services Company	160,828	133,421	105,722	365,646
E-00683	4003804	Khaid Ali and Mohammed Akil Co. W.L.L.	121,208	121,208	55,644	192,540
E-00684	4003805	Abdulla Sayid Rajab Al-Rifai & Sons General Trading & Cont. Co.	237,658	235,958	43,768	151,186
E-00687	4003807	Al Saad Foodstuff Co. W.L.L.	35,080	34,330	17,664	61,121
E-00688	4003808	Mahmoud and Nader Jewellery Co. W.L.L.	683,360	683,360	167,404	579,171
E-00689	4003809	Duaij Al Salman Gen. Trad. & Contr. Co.	234,157	234,157	162,822	563,198
E-00690	4003810	International Poultry Company	302,894	298,894	268,876	930,367
E-00691	4003811	World of Designs for Advertisement & Publicity	41,347	35,127	34,542	119,522
E-00693	4003813	Ogab and Hamoud Malek Trading Company	848,360	761,571	471,222	1,636,829
E-00695	4003815	Instruments Installation and Maintenance Company	246,123	245,123	194,613	673,311
E-00696	4003816	Anad Hadi Farhan and Son Limited Partnership Co.	15,000	15,000	6,076	21,024
E-00697	4003817	Mohammed Sadiqi & Mohammed Akeel Tawfiqi Co.	297,009	290,009	199,836	691,262
E-00700	4003820	Kuwait Reinsurance Company K.S.C. (Closed)	123,558	112,803	8,247	28,536
E-00701	4003821	Ali Ibrahim & Sons Co. for Electric Sets	56,216	55,016	16,587	57,394
E-00702	4003822	Saud Abdul Aziz Al-Rashed and Partners	31,921	29,421	14,493	50,149
E-00703	4003823	Habchi & Chalhoub W.L.L.	661,859	658,859	339,490	1,174,183
E-00704	4003824	El Kzdehar Electronic & Watch Est. Co.	940,837	940,337	633,237	2,190,598
E-00705	4003825	Al Abeer Gifts and Watches Company	470,915	422,294	251,244	869,823
E-00706	4003826	Al Balad Company for Jewellery	500,932	500,932	486,512	1,679,242
E-00707	4003827	Al-Saleh and Al-Ashram Trading Company	489,473	439,436	304,971	1,055,034
E-00708	4003828	Moustache Trading Company	178,533	178,533	127,506	441,197
E-00709	4003829	Sayer and Hallal Co.	339,110	337,610	291,264	1,005,778
E-00711	4003831	Oriental Markets Co.	117,319	117,319	51,794	179,179
E-00712	4003832	Al Qatami Trading Company	73,263	72,513	30,159	104,356
E-00714	4003833	Tifoni Real Estate Company	1,270,566	1,270,566	567,778	1,961,219
E-00716	4003835	The International Center Company for Survey and Inspection	152,890	151,290	102,793	355,685

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00717	4003836	Naseem Glass Company - Nuzhat Wadie Moosa & Her Partners	319,927	297,962	199,932	691,711
E-00718	4003837	Hamad Al-Mutawa Trading Establishment Hamad Khalid Al-Mutawa & Partners (W.L.L.)	486,298	425,699	179,448	620,927
E-00719	4003838	All People Trading Co., W.L.L.	132,313	129,063	95,621	330,869
E-00720	4003839	Al Zahem & Malhotra General Trdg. & Contracting Co. W.L.L.	2,793,956	2,789,456	1,512,125	5,226,408
E-00721	4003840	Turki Al Dabbous & Sons Trading Building Materials & Contracting Co.	38,315	37,315	26,882	93,003
E-00722	4003841	Al Naqeeb & Khattar Co.	283,749	282,749	38,801	134,195
E-00723	4003842	World Stars Fashion Company	68,884	68,184	60,128	207,886
E-00725	4003844	Al Khaleejia Travel & Tourism Company W.L.L.	293,032	290,532	18,239	63,062
E-00726	4003845	United Marketing Company	166,239	166,239	71,970	248,992
E-00727	4003846	Gulf Colour Film Lab Company	251,723	251,723	143,501	496,471
E-00728	4003847	Al-Hadi Real Estate Co. W.L.L.	243,440	243,440	0	0
E-00729	4003848	Kuwait Aluminium Co. K.S.C.	1,836,964	1,662,136	849,165	2,937,541
E-00730	4003849	Al-Sabah General Electric Company Limited	742,373	666,628	392,039	1,356,429
E-00732	4003850	Electronic and Electrical Maintenance Co.	626,658	623,372	390,769	1,349,789
E-00733	4003851	Mohamed Sha'alan & Wafic Berry Co. W.L.L. Textile & Readywear	92,760	92,524	36,098	124,824
E-00734	4003852	Rewan Trading Co. W.L.L.	257,074	255,074	169,406	586,096
E-00735	4003853	Ibrahim & Maged Co. for Carpentry Tools & Building Materials	124,695	122,695	73,488	254,236
E-00736	4003854	Al-Najdain Trading Co.	123,243	123,243	49,611	171,641
E-00737	4003855	Public Utilities Management Co. (K.S.C.C.)	798,034	794,536	677,097	2,343,591
E-00739	4003857	Al-Sayer Abutaqa Tradg. Co.	128,477	126,877	126,877	439,023
E-00740	4003858	Ibrahim Al-Rakum & Sons for General Trading and Contracting Co.	152,767	136,944	47,304	163,658
E-00741	4003859	Tamdeen Real Estate Company - S.A.K	888,935	885,935	458,280	1,584,332
E-00742	4003860	Beirut Pearl Garment Co. W.L.L.	237,101	236,631	129,862	448,893

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00745	4003863	Al Rashed & Al Essaly Company	75,827	74,627	22,242	76,954
E-00746	4003864	Consolidated Contractors Company / Dirar Yousif Al Ghanim & Co. - W.L.L	866,621	853,121	645,122	2,232,948
E-00747	4003865	Abdul Hameed Bouzraia for Trading & Contracting Company	136,200	135,700	60,573	209,595
E-00749	4003867	Al-Quraish & Al-Majid Trading Co. Wadaha Abdel Karim Al Majid and Partners	90,048	89,248	26,143	90,460
E-00751	4002409	Greenline General Trading & Contracting Co.	414,197	412,197	106,175	367,159
E-00752	4003869	Mother Care Company Mustafa Abdullatif Al Omi and Bros	287,392	286,542	184,394	638,042
E-00753	4003870	Al Basman General Trading & Contracting Company W.L.L.	365,204	362,298	292,880	1,012,614
E-00754	4003871	Droub Trading Company	217,365	216,615	26,305	91,021
E-00755	4003872	Rebla General Trading and Contracting Co. W.L.L	68,203	67,203	25,270	87,190
E-00756	4003873	Muhammad Al-Rajhi & Sons Company for General Trading and Contracting	127,994	126,494	108,236	374,238
E-00757	4003874	Az Trading Company	36,504	36,504	21,556	74,405
E-00758	4003875	Abdullah & Abdul-Rahman Hamad Al Hadlaq General Trading Company	632,735	631,985	329,279	1,139,374
E-00759	4003876	Gulf Shores Overland Transport, Import & Export Co.	43,667	42,967	20,019	69,270
E-00760	4003877	Al Shalami General Trading & Cont. Co.	26,950	26,950	21,204	73,370
E-00761	4003878	Green Wing Readymade Garments Co.	125,191	124,241	216,499	748,871
E-00762	4003879	Kuwait United Trading & General Contracting Company	141,719	126,979	99,582	344,576
E-00763	4003880	Arab Building Materials Co. W.L.L	1,832,540	1,829,540	804,121	2,780,849
E-00764	4003881	Al-Zabin International Group Co.	1,469,692	1,463,192	594,500	2,057,093
E-00766	4003883	Kuwaiti Cattle & Livestock Farms Co.	38,225	38,225	9,938	34,388
E-00769	4003886	Kuwait Cement Supply Company	1,197,110	984,567	94,850	328,201
E-00770	4003887	Kuwait Amateur Radio Society	51,865	50,865	31,184	107,857

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00772	4003888	Gulf Indo Electronics Company W.L.L.	132,625	117,957	57,875	200,213
E-00773	4003889	Al-Ajeel & Al-Zaid Gen. Cont. & Trading Co.	221,270	217,770	31,917	110,397
E-00774	4003890	Kuwait & Middle East Financial Investment Company	224,976	224,976	180,926	626,042
E-00775	4003891	Marafi Carpet, Furniture & Curtain Co. / Heirs of Abdul Samad Abdullah Marafi & Partners (W.L.L.)	185,585	161,397	180,813	625,851
E-00776	4003892	Tola Gold Company Fatema Hussein Al Eassa & Partners	739,001	736,501	602,256	2,083,805
E-00777	4003893	Akram and Yaccoub Agga Foodstuff Company	1,699,192	1,511,172	366,213	1,260,880
E-00778	4003894	Al Ahalii General Trading & Contracting Co.	979,110	970,610	546,891	1,892,356
E-00780	4003896	Ahmad & Yousef Abdullah Al-Fahad Trading & Contracting Co.	1,403,259	1,398,259	1,139,721	3,934,997
E-00781	4003897	Al Shouhra Fashion Co.	293,271	290,271	207,001	716,297
E-00782	4003898	Golden Horse Building Roads Clearing Cont. Co.	77,761	75,761	70,544	244,097
E-00783	4003899	Al-Daleel Publishing and Distribution Company / Mohamed Nasser Al-Sunousy Par. W.L.L.	68,123	62,893	47,870	165,647
E-00784	4003900	Al Behar for Loading Voiding Ships and Delivery Cargo Co.	19,690	19,140	10,500	36,332
E-00787	4003902	Mohamed Amin Al Awadi Sons General Trading Company	101,460	101,273	54,545	188,550
E-00788	4003903	Kuwait Chamber of Commerce and Industry	161,575	159,075	117,359	405,808
E-00790	4003905	Khabbaz Kuwait Co. Abdul Razek Al Mishari Co.	30,014	30,014	19,209	66,467
E-00791	4003906	Blue Arrow Shipping Agencies Company	180,151	179,851	50,316	174,104
E-00792	4003907	Al Solajan Trading and Contracting Co.	86,968	85,468	35,168	121,595
E-00793	4003908	The Graduate Society	13,938	13,438	11,830	40,934
E-00794	4003909	The Gulf Company for Paints and Construction Materials Mohamad Abdullah Zaman & Partners W.L.L.	173,262	173,262	66,684	230,654
E-00798	4003911	Soft Rock Restaurant Company W.L.L.	50,694	50,694	49,701	171,976

UNSEQ claim no.*	UNCC claim no.	Claimant's Name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00799	4003912	Al Masar Co. for Trading Building Materials	368,621	366,121	132,565	458,702
E-00803	4003915	Al Ahleia Insurance Co. S.A.K.	1,786,073	1,781,473	1,039,650	3,599,357
E-00804	4003916	Kuwait National Construction Building Materials Manufacturing & Trading Co. (K.S.C.)	265,254	263,854	155,517	538,121
E-00805	4003917	Fakher Al-Kuwait Readymade	190,063	190,063	41,196	142,487
E-00806	4003918	Al-Rownaq Electrical Equipment and Contracting Co.	89,652	89,652	0	0
E-00807	4003919	Mohd. and Najeeb General Trading Co. W.L.L.	88,029	88,029	71,088	245,932
E-00808	4003920	Al Injaz Contracting Co., S.A.K. (Closed)	162,270	162,270	53,241	184,225
E-00809	4003921	Fashion Jewellers Co. W.L.L.	130,941	130,941	77,510	268,110
E-00810	4003922	Foodstuff Industries Company Kuwaiti Closed Shareholding Company	269,911	266,911	253,631	876,803
Total			49,531,285	47,855,655	25,678,039	88,799,956

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less the amount claimed for claim preparation costs and interest. As set forth in paragraphs 75 and 76 of the report, the Panel has made no recommendation with regard to these items.

Annex 33

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ala Elddin Company for Construction Materials
UNCC claim number: 4003776
UNSEQ number: E-00652

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	32,171	22,035	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	1,339	763	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	33,510	22,798	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: New Exhibition Company
UNCC claim number: 4003777
UNSEQ number: E-00653

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	273,514	175,864	Original loss of tangible property claim reclassified as loss of stock and cash. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings
Loss of cash	28,153	28,153	Recommend awarding claim in full
Loss of profits	35,264	26,448	Claim adjusted for windfall profits
TOTAL	336,931	230,465	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	44,321	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Tasahul Auto Drive Training Company
UNCC claim number: 4003778
UNSEQ number: E-00654

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	10,995	10,995	Recommend awarding claim in full.
Loss of vehicles	6,850	3,500	Original loss of tangible property claim reclassified as loss of vehicles. Claim adjusted to reflect M.V.V. Table values.
TOTAL	17,845	14,495	

Claim preparation costs	300	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Rabiah Construction Company W.L.L.
UNCC claim number: 4003779
UNSEQ number: E-00656

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	565,890	272,433	Original tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for maintenance, depreciation and evidentiary shortcomings.
Loss of stock	146,130	85,128	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of cash	3,400	3,400	Recommend awarding claim in full.
Loss of vehicles	304,630	149,731	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
TOTAL	1,020,050	510,692	

Claim preparation costs	5,750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Sayed Hussain Sons & Co. Limited Partnership
UNCC claim number:	4003780
UNSEQ number:	E-00657

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	15,985	12,788	Original loss of tangible property claim reclassified as loss of tangible property, stock and profits. Tangible property claim adjusted for evidentiary shortcomings.
Loss of stock	537,461	327,247	Claim adjusted for stock build-up and obsolescence.
Loss of profits	393,485	189,249	Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for evidentiary shortcomings.
TOTAL	946,931	529,284	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	166,986	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ward Al-Rabeia Foodstuff and Consumables Goods Co. W.L.L.
UNCC claim number: 4003782
UNSEQ number: E-00659

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	23,591	18,217	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for depreciation.
Loss of stock	1,680,072	616,300	Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence.
Loss of cash	25,670	25,670	Recommend awarding claim in full.
Loss of vehicles	15,350	10,852	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	136,200	61,290	Claim adjusted for evidentiary shortcomings and windfall profits.
Bad debts	102,561	28,930	Claim adjusted for evidentiary shortcomings.
Other loss not categorised	399,130	299,252	Recommend awarding cash deposits claim in full. Claim for investment in branches adjusted for evidentiary shortcomings.
TOTAL	2,382,574	1,060,511	

Interest	282,930	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kifan Shoes Company
UNCC claim number: 4003785
UNSEQ number: E-00662

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	54,426	21,151	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	24,576	18,432	Claim adjusted for evidentiary shortcomings.
TOTAL	79,002	39,583	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Dibaj Al-Mutahida General Trading and Contracting
UNCC claim number: 4003789
UNSEQ number: E-00666

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	43,978	24,188	Original loss of tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of stock	87,965	59,816	Stock and goods in transit claims adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	61,093	16,153	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	193,036	100,157	

Claim preparation costs	1,100	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Attiya & Al-Showly Construction Materials Co. for Trading, Imp. & Exp.
UNCC claim number:	4003790
UNSEQ number:	E-00667

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	477,479	162,954	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	2,128	2,128	Recommend awarding claim in full.
TOTAL	479,607	165,082	

Claim preparation costs	1,350	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Wassan Decoration Company
UNCC claim number: 4003791
UNSEQ number: E-00668

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	18,832	18,832	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	284,705	209,438	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	3,700	973	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	171,523	171,523	Recommend awarding claim in full.
TOTAL	478,760	400,766	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Mashreq Real Estate Co. (K.S.C.C.)
UNCC claim number: 4003792
UNSEQ number: E-00670

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	38,879	17,107	Claim adjusted for maintenance, evidentiary shortcomings and failure to repair/replace.
Loss of cash	546	0	Insufficient evidence to substantiate claim. See paragraph 45 of the report.
Loss of profits	39,177	11,519	Claim adjusted to reflect historical results.
TOTAL	78,602	28,626	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Usaimi Bulding Materials Co. W.L.L.
UNCC claim number: 4003793
UNSEQ number: E-00671

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	299	299	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	88,276	44,710	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	7,382	7,382	Recommend awarding claim in full.
TOTAL	95,957	52,391	

Claim preparation costs	1,111	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Maki and Matrouk Trading Company Partnership
UNCC claim number:	4003794
UNSEQ number:	E-00672

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	86,273	36,278	Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	8,614	4,071	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	94,887	40,349	

Claim preparation costs	8,639	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mahatta Trading Company W.L.L.
UNCC claim number:	4003795
UNSEQ number:	E-00673

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,318	5,236	Original loss of tangible property claim reclassified as loss of tangible property, cash and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace.
Loss of cash	6,067	6,067	Recommend awarding claim in full.
Loss of vehicles	31,400	29,986	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	15,960	3,115	Claim adjusted to reflect historical results, for evidentiary shortcomings and windfall profits.
TOTAL	61,745	44,404	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Manabe Al Khaleej for Imp. & Exp. Company
UNCC claim number:	4003796
UNSEQ number:	E-00674

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	92,050	52,261	Original loss of tangible property claim reclassified as loss of vehicles. Claim adjusted to reflect M.V.V. Table values and as per paragraph 35 of the report.
TOTAL	92,050	52,261	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Ahleia Switchgear Company
UNCC claim number: 4003797
UNSEQ number: E-00675

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	2,372,499	1,727,675	Original loss of tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	20,078	20,078	Recommend awarding claim in full.
Loss of profits	481,401	218,659	Original loss of contracts reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits.
TOTAL	2,873,978	1,966,412	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Rafraf for Ready Made Clothes & Luxurious Company
UNCC claim number: 4003798
UNSEQ number: E-00676

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	7,427	4,228	Original loss of tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	30,081	18,502	Claim adjusted for stock build-up and obsolescence.
Loss of profits	2,575	0	Claim adjusted to reflect historical results.
TOTAL	40,083	22,730	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Shlash & Sons General Contracts Shlash S. Alhajraf & Sons - W.L.L.
UNCC claim number: 4003799
UNSEQ number: E-00677

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	222,962	118,294	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance and depreciation.
Loss of stock	358,537	72,213	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	22,083	16,411	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	226,725	37,605	Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for windfall profits.
Restart costs	1,018	865	Claim adjusted for evidentiary shortcomings.
TOTAL	831,325	245,388	

Claim preparation costs	1,060	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mahdi Salem and Al Saeedy Transport and Customs Clearing Company
UNCC claim number: 4003801
UNSEQ number: E-00679

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,370	7,216	Original tangible property claim reclassified as loss of tangible property, vehicles and restart costs. Tangible property claim adjusted for maintenance, evidentiary shortcomings and failure to repair/replace.
Loss of vehicles	26,500	9,096	Claim adjusted as per paragraph 35 of the report and for arithmetical errors.
Loss of profits	3,637	2,728	Claim adjusted for windfall profits.
Restart costs	3,418	0	Insufficient evidence to substantiate claim.
TOTAL	44,925	19,040	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ghunaim Trading Company
UNCC claim number: 4003802
UNSEQ number: E-00680

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,018	846	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace.
Loss of stock	10,786	5,653	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	3,356	2,886	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. table values.
Loss of profits	9,000	7,808	Original loss of contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results and to restrict period of loss to 10 months.
Bad debts	58,961	0	Insufficient evidence to support claim. See paragraphs 61-63 of the report.
TOTAL	84,121	17,193	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Almeer Technical Services Company
UNCC claim number: 4003803
UNSEQ number: E-00681

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	18,139	17,831	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation.
Loss of stock	37,576	28,745	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	13,100	10,692	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	64,606	48,454	Claim adjusted for windfall profits.
TOTAL	133,421	105,722	

Interest	27,407	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Khald Ali and Mohammed Akil Co. W.L.L.
UNCC claim number:	4003804
UNSEQ number:	E-00683

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	98,764	43,456	Original tangible property claim reclassified to loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	21,444	12,188	Claim adjusted to reflect historical results and to restrict the period of loss to seven months.
TOTAL	120,208	55,644	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abdulla Sayid Rajab Al-Rifai & Sons General Trading & Contracting Co.
UNCC claim number:	4003805
UNSEQ number:	E-00684

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	34,239	0	Original loss of tangible property claim reclassified as loss of tangible property and stock. Insufficient evidence to substantiate tangible property claim. See paragraphs 37-38 of the report.
Loss of stock	140,013	19,986	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of profits	61,656	23,782	Claim adjusted to reflect historical results, to restrict the period of loss to 12 months and for evidentiary shortcomings.
TOTAL	235,908	43,768	

Claim preparation costs	1,750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Saad Foodstuff Co. W.L.L.
UNCC claim number: 4003807
UNSEQ number: E-00687

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,514	1,000	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Claim adjusted for depreciation.
Loss of stock	24,517	9,365	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of vehicles	7,299	7,299	Recommend awarding claim in full.
TOTAL	34,330	17,664	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mahmoud and Nader Jewellery Co. W.L.L.
UNCC claim number: 4003808
UNSEQ number: E-00688

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	650,050	159,915	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and stock build-up.
Loss of profits	33,310	7,489	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	683,360	167,404	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Duaij Al Salman Gen. Trad. & Contr. Co.
UNCC claim number: 4003809
UNSEQ number: E-00689

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	23,979	23,979	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	116,698	46,643	Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up.
Loss of vehicles	93,480	92,200	Claim adjusted to reflect M.V.V. Table values.
TOTAL	234,157	162,822	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Poultry Company
UNCC claim number:	4003810
UNSEQ number:	E-00690

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	264,455	259,577	Claim adjusted for depreciation.
Loss of tangible property	12,945	5,953	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation.
Loss of cash	1,309	0	Insufficient evidence to substantiate claim. See paragraph 45 of the report.
Loss of vehicles	2,296	2,296	Recommend awarding claim in full.
Bad debts	15,739	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
Restart costs	2,150	1,050	Claim adjusted to restrict period of loss to seven months.
TOTAL	298,894	268,876	

Claim preparation costs	4,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: World of Designs for Advertisement & Publicity
UNCC claim number: 4003811
UNSEQ number: E-00691

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	35,327	34,542	Claim adjusted for depreciation.
TOTAL	35,327	34,542	

Claim preparation costs	6,020	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ogab and Hamoud Malek Trading Company
UNCC claim number:	4003813
UNSEQ number:	E-00693

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	644,355	356,006	Original loss of tangible property claim reclassified as loss of stock, cash and vehicles. Stock and goods in transit claims adjusted for evidentiary shortcomings and obsolescence.
Loss of cash	34,231	34,231	Recommend awarding claim in full.
Loss of vehicles	11,925	11,925	Recommend awarding claim in full.
Loss of profits	71,060	71,060	Recommend awarding claim in full.
TOTAL	761,571	473,222	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	85,789	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Instruments Installation and Maintenance Company
UNCC claim number:	4003815
UNSEQ number:	E-00695

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	68,885	34,442	Claim adjusted for depreciation.
Loss of tangible property	46,706	46,706	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	20,850	15,950	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	75,113	72,338	Claim adjusted to reflect M.V.V. table values.
Loss of profits	33,569	25,177	Claim adjusted for windfall profits.
TOTAL	245,123	194,613	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Anad Hadi Farhan and Son Limited Partnership Co.
UNCC claim number: 4003816
UNSEQ number: E-00696

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	15,000	6,076	Claim adjusted to reflect M.V.V. Table value.
TOTAL	15,000	6,076	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohammed Sadiqi & Mohammed Akeel Tawfiqi Co.
UNCC claim number: 4003817
UNSEQ number: E-00697

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	9,000	7,200	Original loss of tangible property claim reclassified as loss of real property, tangible property, stock and cash. Real property claim adjusted for maintenance.
Loss of tangible property	10,285	7,518	Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	207,224	165,780	Stock and goods and transit claims adjusted for obsolescence.
Loss of cash	1,000	0	Insufficient evidence to substantiate claim. See paragraph 45 of the report.
Loss of profits	62,500	19,338	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	290,009	199,836	

Claim preparation costs	7,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Reinsurance Company K.S.C. (Closed)
UNCC claim number: 4003820
UNSEQ number: E-00700

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	7,679	7,679	Recommend awarding claim in full.
Loss of cash	210	0	Insufficient evidence to substantiate claim. See paragraph 45 of the report.
Loss of profits	104,346	0	Original loss of contract claim and original payment or relief to others claim reclassified to loss of profits and restart costs. Loss of profits claim adjusted to reflect historical results.
Restart costs	568	568	Recommend awarding claim in full.
TOTAL	112,803	8,247	

Interest	10,755	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ali Ibrahim & Sons Co. for Electric Sets
UNCC claim number:	4003821
UNSEQ number:	E-00701

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	44,806	8,961	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	10,210	7,626	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	55,016	16,587	

Claim preparation costs	1,200	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Saud Abdul Aziz Al-Rashed & Partners
UNCC claim number: 4003822
UNSEQ number: E-00702

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	10,918	5,677	Original loss of tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	13,000	8,816	Claim adjusted to reflect M.V.V. Table value.
Bad debts	5,503	0	Insufficient evidence to support claim. See paragraphs 61-63 of the report.
TOTAL	29,421	14,493	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Habchi & Chalhoub W.L.L.
UNCC claim number: 4003823
UNSEQ number: E-00703

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	19,140	15,312	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings.
Loss of stock	312,689	178,461	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	327,030	145,717	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	658,859	339,490	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	El Ezdehar Electronic & Watch Est. Co.
UNCC claim number:	4003824
UNSEQ number:	E-00704

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	874,817	584,097	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	65,520	49,140	Claim adjusted for evidentiary shortcomings.
TOTAL	940,337	633,237	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Abeer Gifts and Watches Company
UNCC claim number: 4003825
UNSEQ number: E-00705

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	360,914	189,864	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	61,380	61,380	Recommend awarding claim in full.
TOTAL	422,294	251,244	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	47,621	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Balad Company for Jewellery
UNCC claim number: 4003826
UNSEQ number: E-00706

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	111,580	97,180	Original loss of tangible property claim reclassified as loss of stock. Stock claim recommended in full. Goods in transit claim adjusted for evidentiary shortcomings.
Loss of profits	389,352	389,352	Recommend awarding claim in full.
TOTAL	500,932	486,532	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Saleh and Al-Ashram Trading Company
UNCC claim number: 4003827
UNSEQ number: E-00707

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	409,758	278,635	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	29,678	26,336	Claim adjusted to reflect historical results.
TOTAL	439,436	304,971	

Claim preparation costs	600	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	49,437	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Moustache Trading Company
UNCC claim number: 4003828
UNSEQ number: E-00708

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	54,500	43,600	Claim adjusted for maintenance.
Loss of stock	121,333	82,647	Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence.
Loss of profits	2,700	1,259	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	178,533	127,506	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sayer and Hallal Co.
UNCC claim number: 4003829
UNSEQ number: E-00709

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	207,970	166,376	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence.
Loss of profits	129,640	124,688	Claim adjusted to reflect historical results.
TOTAL	337,610	291,064	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Oriental Markets Company
UNCC claim number:	4003831
UNSEQ number:	E-00711

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	3,889	3,889	Original loss of tangible property reclassified as loss of tangible property and stock. Recommend awarding claim in full.
Loss of stock	108,734	44,383	Claim adjusted for stock build-up and obsolescence.
Loss of profits	4,696	3,522	Claim adjusted for evidentiary shortcomings.
TOTAL	117,319	51,794	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Qatami Trading Company
UNCC claim number: 4003832
UNSEQ number: E-00712

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	20,000	16,000	Claim adjusted for maintenance.
Loss of stock	50,513	13,249	Original loss of tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence.
Loss of vehicles	2,000	910	Claim adjusted to reflect M.V.V. Table values.
TOTAL	72,513	30,159	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Tifoni Real Estate Company
UNCC claim number:	4003833
UNSEQ number:	E-00714

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	350,500	257,817	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of profits	920,066	309,961	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	1,270,566	567,778	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The International Center Company for Survey and Inspection
UNCC claim number: 4003835
UNSEQ number: E-00716

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	19,000	15,200	Claim adjusted for maintenance.
Loss of tangible property	100,491	80,393	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for failure to repair/replace.
Loss of vehicles	7,200	7,200	Recommend awarding claim in full.
Loss of profits	24,599	0	Claim adjusted to reflect historical results.
TOTAL	151,290	102,793	

Claim preparation costs	1,600	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Naseem Glass Company - Nuzhat Wadie Moosa & Her Partners
UNCC claim number:	4003836
UNSEQ number:	E-00717

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	262,459	173,320	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	35,483	26,612	Claim adjusted for windfall profits.
TOTAL	297,942	199,932	

Claim preparation costs	21,985	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Hamad Al-Mutawa Trading Establishment Hamad Khalid Al-Mutawa & Partners (W.L.L.)
UNCC claim number: 4003837
UNSEQ number: E-00718

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	263,894	179,448	Original loss of tangible property reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Payment or relief to others	15,183	0	Original payment or relief to others claim reclassified as payment or relief to others and loss of profit. Insufficient evidence to substantiate claim. See paragraphs 50-51 of the report.
Loss of profits	146,622	0	Claim adjusted to reflect historical results.
TOTAL	425,699	179,448	

Claim preparation costs	2,755	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	57,844	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: All People Trading Co., W.L.L.
UNCC claim number: 4003838
UNSEQ number: E-00719

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	114,385	83,885	Original loss of tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for evidentiary shortcomings.
Loss of vehicles	2,910	2,910	Recommend awarding claim in full.
Loss of profits	11,768	8,826	Claim adjusted for windfall profits.
TOTAL	129,063	95,621	

Claim preparation costs	3,250	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Zahem & Malhotra General Trdg. & Contracting Co. W.L.L.
UNCC claim number: 4003839
UNSEQ number: E-00720

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	1,786,464	949,068	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	36,300	27,602	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	772,274	535,455	Claim adjusted to reflect historical results and to restrict the period of loss to 12 months.
Bad debts	194,418	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
TOTAL	2,789,456	1,512,125	

Claim preparation costs	4,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Turki Al Dabbous & Sons Trading Building Materials & Contracting Co.
UNCC claim number: 4003840
UNSEQ number: E-00721

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	22,136	19,773	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation.
Loss of vehicles	12,707	5,547	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	2,472	1,112	Claim adjusted for evidentiary shortcomings and windfall profits.
TOTAL	37,315	26,432	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Naqeeb & Khattar Co.
UNCC claim number: 4003841
UNSEQ number: E-00722

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	19,859	15,885	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation.
Loss of stock	8,489	4,966	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	80,110	0	Insufficient evidence to substantiate claim. See paragraph 47 of the report.
Loss of profits	17,950	17,950	Recommend awarding claim in full.
Bad debts	156,341	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
TOTAL	282,749	38,801	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: World Stars Fashion Company
UNCC claim number: 4003842
UNSEQ number: E-00723

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	5,300	4,240	Original restart costs claim reclassified as loss of real property. Claim adjusted for maintenance.
Loss of stock	27,685	22,148	Original tangible property claim reclassified as loss of stocks. Claim adjusted for obsolescence.
Loss of profits	35,399	33,740	Claim adjusted to reflect historical results and to restrict the period of loss to 12 months.
TOTAL	68,384	60,128	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Khaleejia Travel & Tourism Company W.L.L.
UNCC claim number:	4003844
UNSEQ number:	E-00725

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	5,834	4,793	Original loss of tangible property claim reclassified as loss of tangible property and cash. Tangible property claim adjusted for depreciation.
Loss of cash	26,485	0	Insufficient evidence to support claim. See paragraph 45 of the report.
Loss of profits	258,213	13,446	Claim adjusted to reflect historical results and for windfall profits and evidentiary shortcomings.
TOTAL	290,532	18,239	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: United Marketing Company
UNCC claim number: 4003845
UNSEQ number: E-00726

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	4,158	2,827	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of tangible property	1,410	705	Claim adjusted for depreciation.
Loss of stock	117,000	62,107	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	23,671	6,331	Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for evidentiary shortcomings.
TOTAL	146,239	71,970	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Gulf Colour Film Lab Company
UNCC claim number: 4003846
UNSEQ number: E-00727

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	84,922	78,761	Original loss of tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation.
Loss of stock	41,815	17,917	Claim adjusted for stock build-up and obsolescence.
Loss of profits	114,987	46,823	Claim adjusted to reflect historical results and for evidentiary shortcomings.
Other loss not categorised	9,999	0	See paragraph 72 of the report.
TOTAL	251,723	143,501	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Hadi Real Estate Co.
UNCC claim number: 4003847
UNSEQ number: E-00728

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of profits	243,440	0	Claim adjusted to reflect historical results.
TOTAL	243,440	0	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Aluminium Co. K.S.C.
UNCC claim number: 4003848
UNSEQ number: E-00729

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	300,000	240,000	Claim adjusted for maintenance.
Loss of tangible property	31,630	27,165	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance.
Loss of stock	1,032,997	479,575	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	15,000	14,650	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	241,169	61,867	Claim adjusted to reflect historical results and for windfall profits.
Restart costs	41,340	25,888	Original other loss not categorised reclassified as loss of profits and restart costs. Claim adjusted for evidentiary shortcomings.
TOTAL	1,662,136	849,145	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	164,828	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Sabah General Electric Company Limited
UNCC claim number: 4003849
UNSEQ number: E-00730

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	650,227	379,738	Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	16,401	12,301	Claim adjusted for windfall profits.
TOTAL	666,628	392,039	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	74,995	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Electronic and Electrical Maintenance Co.
UNCC claim number:	4003850
UNSEQ number:	E-00732

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	298,209	175,215	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted to reflect obsolescence and evidentiary shortcomings.
Loss of profits	284,002	211,521	Claim adjusted to reflect historical results.
Restart costs	4,013	4,013	Original payment or relief to others claim reclassified as restart costs. Recommend awarding claim in full.
Other loss not categorised	37,148	0	Insufficient evidence to substantiate claim.
TOTAL	623,372	390,749	

Claim preparation costs	3,286	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohammed Sha'alan & Wafic Berry Co. W.L.L. Textile & Readywear
UNCC claim number: 4003851
UNSEQ number: E-00733

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,570	4,260	Original loss of tangible claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	55,000	24,310	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	23,910	7,528	Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for evidentiary shortcomings.
Other loss not categorised	5,044	0	Insufficient evidence to support claim. See paragraph 69 of the report.
TOTAL	92,524	36,098	

Claim preparation costs	236	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Rewan Trading Co. W.L.L.
UNCC claim number: 4003852
UNSEQ number: E-00734

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	36,536	36,536	Original loss of tangible property claim reclassified as loss of tangible property and stock. Recommend awarding tangible property claim in full.
Loss of stock	161,291	129,033	Claim adjusted for obsolescence.
Loss of profits	34,200	3,917	Claim adjusted to reflect historical records, for evidentiary shortcomings and windfall profits.
Restart costs	23,047	0	Insufficient evidence to support claim.
TOTAL	255,074	169,486	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ibrahim & Maged Co. for Carpentry Tools & Building Materials
UNCC claim number:	4003853
UNSEQ number:	E-00735

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	104,134	59,567	Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. Insufficient evidence to substantiate claim for loss of goods in transit.
Loss of profits	18,561	13,921	Claim adjusted for windfall profits.
TOTAL	122,695	73,488	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. **See paragraph 76 of the report.**

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Najdain Trading Co.
UNCC claim number: 4003854
UNSEQ number: E-00736

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,514	8,514	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	69,792	26,541	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	6,353	3,315	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	38,584	11,241	Claim adjusted to reflect historical results, to restrict the period of loss to 12 months, for windfall profits and evidentiary shortcomings.
TOTAL	123,243	49,611	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Public Utilities Management Co. (K.S.C.C.)
UNCC claim number: 4003855
UNSEQ number: E-00737

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	39,725	39,725	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	97,044	52,816	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of cash	4,566	4,566	Recommend awarding claim in full.
Loss of vehicles	8,541	3,619	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	641,983	577,171	Original payment or relief to others claim reclassified as loss of profits. Claim adjusted to reflect historical results.
Bad debts	2,675	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
TOTAL	794,534	677,897	

Claim preparation costs	3,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Sayer Abutaqa Tradg. Co.
UNCC claim number: 4003857
UNSEQ number: E-00739

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of profits	126,877	126,877	Recommend awarding claim in full.
TOTAL	126,877	126,877	

Claim preparation costs	1,600	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ibrahim Al-Rakum & Sons for General Trading and Contracting Co.
UNCC claim number:	4003858
UNSEQ number:	E-00740

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	47,384	47,384	Original loss of tangible property claim reclassified as loss of stock. Recommend awarding stock claim in full.
Loss of profits	87,560	0	Claim adjusted to reflect historical results.
TOTAL	134,944	47,384	

Claim preparation costs	1,800	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	16,023	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Tamdeen Real Estate Company - S.A.K.
UNCC claim number: 4003859
UNSEQ number: E-00741

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	81,442	62,086	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of profits	804,493	396,194	Claim adjusted to reflect historical results.
TOTAL	885,935	458,280	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Beirut Pearl Garment Co. W.L.L.
UNCC claim number:	4003860
UNSEQ number:	E-00742

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,686	1,993	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation.
Loss of stock	188,705	82,629	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	45,240	45,240	Recommend awarding claim in full.
TOTAL	236,631	129,862	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Rashed & Al Essaly Company
UNCC claim number: 4003863
UNSEQ number: E-00745

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	800	800	Original tangible property reclassified as loss of tangible property, vehicles and stock. Recommend awarding tangible property claim in full.
Loss of stock	62,815	19,082	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	1,600	1,600	Recommend awarding claim in full.
Loss of profits	9,412	760	Claim adjusted to reflect historical results, to restrict the period of loss to 12 months, for evidentiary shortcomings and windfall profits.
TOTAL	74,627	22,242	

Claim preparation costs	1,200	n.a	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Consolidated Contractors Company / Diraar Yousif Al Ghanim & Co. W.L.L.
UNCC claim number: 4003864
UNSEQ number: E-00746

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	611,816	453,627	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation, maintenance and evidentiary shortcomings.
Loss of vehicles	241,305	191,695	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report.
TOTAL	853,121	645,322	

Claim preparation costs	13,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abdul Hameed Boukrais for Trading & Contracting Company
UNCC claim number: 4003865
UNSEQ number: E-00747

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	135,700	60,573	Original tangible property claim reclassified as loss of vehicles. Claim adjusted to reflect M.V.V. Table values.
TOTAL	135,700	60,573	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Quraish & Al-Majid Trading Co. Wadaha Abdel Karim Al Majid and Partners
UNCC claim number: 4003867
UNSEQ number: E-00749

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	561	449	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for failure to repair/replace.
Loss of stock	71,596	18,174	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	17,091	7,520	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	89,248	26,143	

Claim preparation costs	800	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Greenline General Trading & Contracting Co.
UNCC claim number: 4002409
UNSEQ number: E-00751

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	19,000	15,200	Original tangible property claim reclassified as loss of real property, tangible property, stock and vehicles. Real property claim adjusted for maintenance.
Loss of tangible property	59,411	30,342	Claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of stock	91,281	21,498	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	22,350	18,265	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report.
Loss of profits	220,155	20,870	Claim adjusted to reflect historical results, to restrict the period of loss to 12 months and for evidentiary shortcomings.
TOTAL	412,197	106,175	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mother Care Co. Mustafa Abdullatif Al Omi & Bros.
UNCC claim number: 4003869
UNSEQ number: E-00752

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	26,957	21,262	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace.
Loss of stock	256,584	160,443	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	3,001	2,689	Claim adjusted to reflect M.V.V. Table values.
TOTAL	286,542	184,394	

Claim preparation costs	850	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Basman General Trading & Contracting Company W.L.L.
UNCC claim number: 4003870
UNSEQ number: E-00753

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2	2	Original tangible property claim reclassified as loss of tangible property and stock. Recommend awarding tangible property claim in full.
Loss of stock	273,368	218,694	Claim adjusted for obsolescence.
Loss of vehicles	1,998	0	Insufficient evidence to substantiate claim.
Loss of profits	86,930	74,184	Claim adjusted to reflect historical results.
TOTAL	362,298	292,880	

Claim preparation costs	2,906	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Droub Trading Company
UNCC claim number: 4003871
UNSEQ number: E-00754

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	216,615	26,305	Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence.
TOTAL	216,615	26,305	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Rebla General Trading and Contracting Co. W.L.L.
UNCC claim number: 4003872
UNSEQ number: E-00755

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	41,072	13,143	Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	4,805	4,805	Recommend awarding claim in full.
Loss of profits	21,326	7,322	Claim adjusted to reflect historical results.
TOTAL	67,203	25,270	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mohammed Al-Rajhi & Sons Company for General Trading and Contracting
UNCC claim number:	4003873
UNSEQ number:	E-00756

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,396	10,130	Original tangible property reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation.
Loss of stock	36,741	21,121	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	2,000	626	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	76,357	76,357	Recommend awarding claim in full.
TOTAL	126,494	108,234	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Az Trading Company
UNCC claim number: 4003874
UNSEQ number: E-00757

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,233	986	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings.
Loss of stock	4,275	3,847	Claim adjusted for obsolescence.
Loss of profits	30,996	16,723	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	36,504	21,556	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abdullah & Abdul-Rahman Hamad Al Hadlaq General Trading Company
UNCC claim number: 4003875
UNSEQ number: E-00758

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	628,985	327,072	Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	3,000	2,207	Claim adjusted to reflect M.V.V. Table values.
TOTAL	631,985	329,279	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Gulf Shores Overland Transport, Import & Export Co
UNCC claim number:	4003876
UNSEQ number:	E-00759

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	14,417	10,422	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for maintenance and evidentiary shortcomings.
Loss of vehicles	28,550	9,597	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report.
TOTAL	42,967	20,019	

Claim preparation costs	700	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Shalami General Trading & Cont. Co.
UNCC claim number: 4003877
UNSEQ number: E-00760

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,730	1,730	Original tangible property claim reclassified as loss of tangible property and stock. Recommend awarding tangible property claim in full.
Loss of stock	25,220	19,474	Claim adjusted for stock build-up and obsolescence.
TOTAL	26,950	21,204	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Green Wing Readymade Garments Co.
UNCC claim number: 4003878
UNSEQ number: E-00761

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	276,399	186,018	Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for stock build-up and obsolescence.
Loss of vehicles	500	500	Recommend awarding claim in full
Loss of profits	47,342	29,981	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	324,241	216,499	

Claim preparation costs	1,150	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait United Trading & General Contracting Company
UNCC claim number: 4003879
UNSEQ number: E-00762

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	126,979	99,582	Claim adjusted for depreciation and evidentiary shortcomings.
TOTAL	126,979	99,582	

Claim preparation costs	16,740	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Arab Building Materials Co. W.L.L.
UNCC claim number: 4003880
UNSEQ number: E-00763

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	49,500	38,098	Original real property and other loss claims reclassified as loss of real property, tangible property and stock. Real property claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	38,473	30,778	Claim adjusted for failure to repair/replace.
Loss of stock	656,703	591,184	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	270,627	144,061	Claim adjusted to reflect historical results.
Bad debts	814,237	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
TOTAL	1,829,540	804,121	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Zabin International Group Co.
UNCC claim number: 4003881
UNSEQ number: E-00764

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	207,273	86,949	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, evidentiary shortcomings and maintenance.
Loss of stock	767,253	487,282	Stock claim adjusted for stock build-up and obsolescence. Insufficient evidence to substantiate goods in transit claim.
Loss of vehicles	27,020	20,269	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report.
Loss of profits	439,155	0	Original contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results.
Bad debts	22,491	0	Insufficient evidence to substantiate claim. See paragraphs 61-63 of the report.
TOTAL	1,463,192	594,500	

Claim preparation costs	6,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwaiti Cattle & Livestock Farms Co.
UNCC claim number: 4003883
UNSEQ number: E-00766

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	38,225	9,938	Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings.
TOTAL	38,225	9,938	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Cement Supply Company
UNCC claim number: 4003886
UNSEQ number: E-00769

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	62,439	44,956	Original tangible property claim reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for depreciation.
Loss of vehicles	28,242	28,242	Recommend awarding claim in full.
Bad debts	893,866	21,652	Claim adjusted for evidentiary shortcomings.
TOTAL	984,547	94,850	

Claim preparation costs	10,322	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	202,241	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Amateur Radio Society
UNCC claim number: 4003887
UNSEQ number: E-00770

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	3,320	2,656	Claim adjusted for maintenance.
Loss of tangible property	32,001	21,363	Original tangible property claim reclassified as loss of tangible property, cash and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace.
Loss of cash	2,947	1,208	Claim adjusted for evidentiary shortcomings.
Loss of vehicles	600	600	Recommend awarding claim in full.
Loss of profits	11,997	5,357	Claim adjusted to reflect historical results.
TOTAL	50,865	31,184	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Gulf Indo Electronics Company W.L.L.
UNCC claim number: 4003888
UNSEQ number: E-00772

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,697	1,697	Original tangible property claim reclassified as loss of tangible property and stock. Recommend awarding tangible property claim in full.
Loss of stock	95,740	43,120	Claim adjusted for stock build-up and obsolescence.
Loss of profits	20,520	13,058	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	117,957	57,875	

Claim preparation costs	1,300	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	13,368	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Ajeel & Al-Zaid Gen. Cont. & Trading Co
UNCC claim number: 4003889
UNSEQ number: E-00773

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	13,978	13,978	Original tangible property claim reclassified as loss of tangible property and vehicles. Recommend awarding tangible property claim in full.
Loss of vehicles	10,269	6,171	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	193,523	11,768	Original contract and payment or relief to others claims reclassified as loss of profits. Claim adjusted to reflect historical results.
TOTAL	217,770	31,917	

Claim preparation costs	3,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait & Middle East Financial Investment Company
UNCC claim number: 4003890
UNSEQ number: E-00774

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Restart costs	80,484	68,411	Original payment or relief to others and interest claims reclassified as restart costs and other losses not categorised. Restart costs claim adjusted for evidentiary shortcomings.
Other losses	144,492	112,515	Other losses claim adjusted for evidentiary shortcomings. See paragraph 70 of the report.
TOTAL	224,976	180,926	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Marafi Carpet, Furniture & Curtain Co./Heirs of Abdul Samad Abdullah Marafi & Partners (W.L.L.)
UNCC claim number:	4003891
UNSEQ number:	E-00775

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	881	705	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for failure to repair/replace.
Loss of stock	357,916	177,508	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	2,600	2,600	Recommend awarding claim in full.
TOTAL	361,397	180,813	

Claim preparation costs	24,188	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Tola Gold Company Fatema Hussein Al Kanaa & Partners
UNCC claim number: 4003892
UNSEQ number: E-00776

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,080	2,080	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	596,739	588,634	Recommend awarding stock claim in full. Goods in transit claim adjusted for evidentiary shortcomings.
Loss of vehicles	206	0	Insufficient evidence to substantiate claim.
Loss of profits	39,012	11,542	Claim adjusted to reflect historical results and for windfall profits.
Other loss not categorised	98,464	0	See paragraph 71 of the report.
TOTAL	736,501	602,256	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Akram and Yaccoub Agga Foodstuff Company
UNCC claim number: 4003893
UNSEQ number: E-00777

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	34,254	27,403	Claim adjusted for maintenance.
Loss of stock	1,435,690	312,067	Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of profits	63,228	26,743	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	1,533,172	366,213	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.
Interest	163,220	n.a.	Governing Council's determination pending. See paragraph 75 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahalil General Trading & Contracting Co.
UNCC claim number: 4003894
UNSEQ number: E-00778

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	938,015	520,238	Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	40,615	26,653	Claim adjusted to restrict indemnity period to seven months and for evidentiary shortcomings.
TOTAL	978,630	546,891	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ahmed & Yousef Abdullah Al-Fahd Contracting & General Trading
UNCC claim number: 4003896
UNSEQ number: E-00780

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	352,395	346,900	Original restart costs and other loss claims reclassified to loss of real property. Real property claim adjusted for maintenance
Loss of profits	1,045,864	792,821	Original income-producing property claim reclassified as loss of profits. Claim adjusted to reflect historical results
TOTAL	1,398,259	1,139,721	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Shouhra Fashion Co.
UNCC claim number: 4003897
UNSEQ number: E-00781

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	152,894	103,968	Original tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	137,377	103,033	Claim adjusted for evidentiary shortcomings.
TOTAL	290,271	207,001	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex 13

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Golden Horse Building Roads Clearing Cont. Co.
UNCC claim number: 4003898
UNSEQ number: E-00782

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	44,983	44,983	Original tangible property claim reclassified as loss of tangible property and stock. Recommend awarding tangible property claim in full.
Loss of stock	25,710	21,760	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	5,068	3,801	Claim adjusted for evidentiary shortcomings.
TOTAL	75,761	70,544	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Daleel Publishing and Distribution Company / Mohamed Nasser Al-Sunousy Par. W.L.L.
UNCC claim number: 4003899
UNSEQ number: E-00783

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	2,800	2,800	Original tangible property claim reclassified as loss of vehicles. Recommend awarding vehicles claim in full.
Loss of profits	60,093	45,070	Claim adjusted for evidentiary shortcomings.
TOTAL	62,893	47,870	

Claim preparation costs	5,230	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Behar for Loading Voiding Ships and Delivery Cargo Co.
UNCC claim number: 4003900
UNSEQ number: E-00784

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	10,500	10,500	Recommend awarding claim in full.
Loss of profits	8,640	0	Original contracts claim reclassified as loss of profits. See paragraph 58 of the report.
TOTAL	19,140	10,500	

Claim preparation costs	550	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohamed Amin Al Awadi Sons General Trading Company
UNCC claim number: 4003902
UNSEQ number: E-00787

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,585	1,422	Original tangible property claim reclassified as loss of tangible property, stock and cash. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of stock	73,546	35,564	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of cash	500	500	Recommend awarding claim in full.
Loss of profits	24,642	17,059	Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for evidentiary shortcomings.
TOTAL	101,273	54,545	

Claim preparation costs	187	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Chamber of Commerce and Industry
UNCC claim number: 4003903
UNSEQ number: E-00788

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of profits	139,581	104,686	Original other loss not categorised claim reclassified as loss of profits and restart costs. Profits claim adjusted for windfall profits.
Restart costs	19,494	12,673	Claim adjusted for evidentiary shortcomings.
TOTAL	159,075	117,359	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Khabbaz Kuwait Co. Abdul Razek Al Misshari Co.
UNCC claim number: 4003905
UNSEQ number: E-00790

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	30,014	19,209	Original tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
TOTAL	30,014	19,209	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Blue Arrow Shipping Agencies Company
UNCC claim number:	4003906
UNSEQ number:	E-00791

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	14,638	6,620	Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of vehicles	77,070	43,696	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report. Claim for vehicle repairs adjusted for maintenance and evidentiary shortcomings.
Loss of profits	88,143	0	Original contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results.
TOTAL	179,851	50,316	

Claim preparation costs	300	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Solajan Trading and Contracting Co.
UNCC claim number: 4003907
UNSEQ number: E-00792

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,915	9,532	Original tangible property claim reclassified as loss of tangible property, stock and cash. Tangible property claim adjusted for evidentiary shortcomings.
Loss of stock	47,400	17,064	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of cash	2,168	0	Insufficient evidence to support claim. See paragraph 45 of the report.
Loss of profits	23,985	8,572	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	85,468	35,168	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	The Graduate Society
UNCC claim number:	4003908
UNSEQ number:	E-00793

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	5,027	3,419	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of tangible property	8,411	8,411	Recommend awarding claim in full.
TOTAL	13,438	11,830	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Gulf Company for Paints and Construction Materials Mohamad Abdullah Zaman & Partners W.L.L.
UNCC claim number: 4003909
UNSEQ number: E-00794

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	134,247	42,584	Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	39,015	24,100	Claim adjusted to reflect historical results.
TOTAL	173,262	66,684	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Soft Rock Restaurant Company W.L.L.
UNCC claim number: 4003911
UNSEQ number: E-00798

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	45,375	45,375	Original tangible property claim reclassified as loss of tangible property and vehicles. Recommend awarding tangible property claim in full.
Loss of vehicles	1,400	1,387	Claim adjusted to reflect M.V.V. Table value.
Loss of profits	3,919	2,939	Claim adjusted for evidentiary shortcomings.
TOTAL	50,694	49,701	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Masar Co. for Trading Building Materials
UNCC claim number: 4003912
UNSEQ number: E-00799

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	244,235	49,588	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See also paragraph 39 of the report.
Loss of stock	121,886	82,977	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
TOTAL	366,121	132,565	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahleia Insurance Co. S.A.K.
UNCC claim number: 4009315
UNSEQ number: E-00803

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	294,871	212,917	Original real property claim reclassified as loss of real property and loss of profits. Real property claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	57,353	40,625	Claim adjusted for depreciation and evidentiary shortcomings.
Loss of profits	1,423,918	780,785	Original payment or relief to others claim also reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits.
Restart costs	5,331	5,331	Original restart costs claim reclassified as restart costs and loss of profits. Recommend awarding restart costs claim in full.
TOTAL	1,781,473	1,039,658	

Claim preparation costs	4,600	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait National Construction Building Materials Manufacturing & Trading Co. (K.S.C.)
UNCC claim number: 4003916
UNSEQ number: E-00804

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	176,892	146,188	Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for evidentiary shortcomings.
Loss of vehicles	13,100	9,329	Claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, see paragraph 35 of the report.
Loss of profits	65,718	0	Claim adjusted to reflect historical results.
Restart costs	7,344	0	See paragraph 66 of the report.
TOTAL	263,054	155,517	

Claim preparation costs	2,200	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Fakher Al-Kuwait Readymade
UNCC claim number: 4003917
UNSEQ number: E-00805

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	14,474	11,579	Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for failure to repair/replace.
Loss of stock	348,328	22,713	Insufficient evidence to substantiate stock claim. See paragraph 41 of the report. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	27,261	6,904	Claim adjusted to reflect historical results.
TOTAL	390,063	41,196	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Rownaq Electrical Equipment and Contracting Co.
UNCC claim number: 4003918
UNSEQ number: E-00806

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	89,652	0	Original tangible property claim reclassified as loss of stock. See paragraphs 42-43 of the report.
TOTAL	89,652	0	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohd. and Najeeb General Trading Co. W.L.L.
UNCC claim number: 4003919
UNSEQ number: E-00807

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	74,462	64,745	Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	1,500	910	Claim adjusted to reflect M.V.V. Table value.
Loss of profits	12,067	5,433	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	88,029	71,088	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Injaz Contracting Co., S.A.K. (Closed)
UNCC claim number: 4003920
UNSEQ number: E-00808

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	19,903	19,903	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	26,334	23,701	Claim adjusted for obsolescence.
Loss of vehicles	1,000	326	Claim adjusted to reflect M.V.V. Table value.
Loss of profits	113,554	9,311	Original contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits.
Other loss not categorised	1,487	0	Insufficient evidence to substantiate claim.
TOTAL	162,278	53,241	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Fashion Jewellers Co. W.L.L.
UNCC claim number:	4003921
UNSEQ number:	E-00809

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	119,840	69,184	Original tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings.
Loss of profits	11,101	8,326	Claim adjusted for evidentiary shortcomings.
TOTAL	130,941	77,510	

Annex II

Recommended awards for eighth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Foodstuff Industries Company Kuwaiti Closed Shareholding Company
UNCC claim number: 4003922
UNSEQ number: E-00810

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	408	408	Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Recommend awarding tangible property claim in full.
Loss of stock	23,127	10,934	Stock and goods in transit claims adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	16,906	15,819	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	226,470	226,470	Recommend awarding claim in full.
TOTAL	266,911	253,631	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 76 of the report.

Annex III

Claims deferred to a later instalment of "E4" claims pursuant to paragraphs 20-22

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's Name
E-00660	4003783	Al Jothoor Printing Press Co.
E-00661	4003784	Al-Raya General Trading Co.
E-00664	4003787	Mechanical Engineering & Contracting Co. (Mohammad A. Rahman Al Hunaidi & Partners)
E-00665	4003788	Abdula Sayid Hashim Al-Gharabally Company W.L.L.
E-00678	4003800	Abdulla Al-Mishari & Partner Co.
E-00692	4003812	Mudhyan & Abdul Majied Electrical Contracting & Trading Co.
E-00694	4003814	Al Othman & Al Muhtaseb Trading Company
E-00698	4003818	Ahmed Abdul Rahman Albader & Co.
E-00699	4003819	Al-Gamal Trading and Contracting Co. W.L.L.
E-00710	4003830	Yellow Shoes Company
E-00724	4003843	Al-Nasser Pharmacy Co.
E-00738	4003856	Al Tokheim Engineering Group Company W.L.L.
E-00743	4003861	Othman Al-Othman Sons Ltd. W.L.L.
E-00744	4003862	Sweets and Restaurants Beit Al-Izz Co.; Limited Liability Company
E-00748	4003866	Al Sameh Co. for Textiles and Blankets W.L.L.
E-00750	4003868	Al-Manar Textiles Company (W.L.L.)
E-00765	4003882	World Furniture Co.
E-00779	4003895	Shuwaikh Electrical Co. Abdul Majid Zalzalah & Partner W.L.L.
E-00789	4003904	The Dry Cleaning Center Company W.L.L.
E-00797	4003910	Dar Al-Shifa Company W.L.L.

- The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

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29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the eighth instalment of "E4" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the eighth instalment of "E4" claims, covering 139 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in annex I of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Kuwait	117	2	171,388,529	88,799,956

1/ The text of the report appears in document S/AC.26/2000/21.

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for 20 claims referred to in paragraphs 20 to 22 and annex III of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

Annex XVI

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29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE TENTH INSTALMENT OF "E4" CLAIMS

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Introduction

1. At its thirtieth session, held on 14-16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Luiz Olavo Baptista ("Chairman"), Jean Naudet, and Jianxi Wang as the second Panel of Commissioners (the "Panel") charged with reviewing category "E4" claims. The "E4" population consists of claims, other than oil sector and environmental claims, submitted by Kuwaiti private-sector corporations and other entities eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The tenth instalment of 141 "E4" claims was submitted to the Panel on 11 February 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the tenth instalment claims.

I. OVERVIEW OF THE TENTH INSTALMENT CLAIMS

4. The 141 tenth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The tenth instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 59,797,136 (approximately USD 206,910,505). The claimants have also asserted claims for interest totalling KWD 2,287,847 (approximately USD 7,916,426) and claim preparation costs aggregating KWD 284,569 (approximately USD 984,668).

6. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 180 days.

7. All of the claimants in the tenth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants conducted trading operations dealing in a variety of goods. Some claimants were engaged in manufacturing and service industries.

8. Claimants in this instalment have sought compensation for all but two of the loss types identified on Form E. The two loss types for which no losses

have been claimed relate to business transactions or courses of dealing and loss of income-producing properties. The two most common losses asserted are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. Claimants have also sought compensation for uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

II. THE PROCEEDINGS

9. Before the tenth instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. Originally 11 claims presented formal deficiencies and the secretariat issued notifications to these claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports 28 and 29 dated 23 July 1999 and 28 October 1999, respectively, to the Governing Council in accordance with article 16 of the Rules ("article 16 reports"). These reports covered, inter alia, the tenth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the tenth instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

15. By its procedural order dated 11 February 2000, the Panel gave notice of its intention to complete its review of the tenth instalment claims and submit its report and recommendations to the Governing Council within 180 days of 11 February 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

16. Pursuant to article 34 of the Rules, additional information was requested from the claimants in order to assist the Panel in its review of the claims. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information were directed through the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). The requests for additional information were made in relation to the entire "E4" claims population and not just the tenth instalment claims.

17. The requests for additional information have been described in paragraphs 19-24 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8). These requests for information are not restated in this report.

18. An additional level of verification was performed to determine if related claimants filed duplicate claims. This review is described in paragraph 18 of the Fourth "E4" Report.

19. During the Panel's review of claims in this instalment, the secretariat informed the Panel of the potential overlap between some claims in this

instalment and certain individual claims for business losses filed before the Commission. This issue has been identified and reported to the Governing Council, in connection with the initial review of business loss claims filed by category "D" claimants, in report no. 30, dated 17 February 2000, submitted by the Executive Secretary of the Commission in accordance with article 16 of the Rules.

20. At the Panel's request, the secretariat conducted a review of the Claims Database and identified fifteen claims in this instalment of "E4" claims, which present a potential for overlap with other individual claims for business losses filed before the Commission. The "E4" claims have been listed in annex III to this report.

21. The Panel considers that additional time is required to determine the nature and extent of the overlap between these "E4" claims and the potentially overlapping individual claims for business losses. At this stage, to allow time for the additional claim development and review required, the Panel has recommended that the claims listed in annex III to this report be deferred to a later instalment of category "E4" claims. Therefore, the Panel has made no findings concerning the claims listed in annex III to this report. Subsequent references in this report to tenth instalment claims are references to the remaining 126 claims listed in annex I.

22. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the tenth instalment claims had been adequately developed and that oral proceedings were not required to explore such issues further.

III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

23. The legal framework and the verification and valuation methodology applied to the evaluation of claims in this instalment is the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

24. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The

Panel's specific recommendations on the losses asserted in this instalment and the reasons therefore are set out in the annexes to this report.

25. Before discussing the Panel's specific recommendations for compensating the tenth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

IV. THE CLAIMS

26. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss category into which the Panel reclassified the losses.

A. Contract

27. Six claimants in this instalment asserted claims aggregating KWD 1,587,618 (approximately USD 5,493,488) for loss of contract. The claims for loss of contract in this instalment did not raise any new legal or verification and valuation issues. The Panel's approach to the compensability of contract losses is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77-84 of the First "E4" Report.

28. The Panel's recommendations with respect to contract losses are set out in annex II.

B. Real property

29. Thirty-four claimants in this instalment asserted claims aggregating KWD 2,829,194 (approximately USD 9,789,599) for loss of real property. These claims related to damage to a number of owned and rented premises in Kuwait.

30. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

31. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

32. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. Similar adjustments were made by the Panel in cases of unforced "betterment", as explained in paragraph 97 of the First "E4" Report.

33. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant's failure to repair or replace the affected property. Where such explanation was absent, the Panel adjusted the claim to offset the "risk of overstatement" created by this shortcoming.

34. The Panel's recommendations on real property losses are summarized in annex II.

C. Tangible property, stock, cash and vehicles

35. Tangible property losses are claimed by a majority of the tenth instalment claimants. The asserted losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 29,497,597 (approximately USD 102,067,810).

36. With regard to the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report.

37. The claimants in this instalment generally submitted the same type of evidence encountered by the Panel in earlier "E4" instalments in relation to claims for loss of tangible property and stock. (See "Report and recommendation made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) (the "Second 'E4' Report") at paras. 55-64.)

38. A majority of the claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by contemporaneous evidence establishing the possession and amount of cash held on 2 August 1990, the Panel recommended no compensation.

39. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the Motor Vehicle Valuation Table ("M.V.V. Table"), as defined at paragraph 135 of the First "E4" Report, or, for vehicles not listed in the M.V.V. Table, against other third-party estimates.

40. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

D. Payment or relief to others

41. Eight claimants in this instalment submitted claims aggregating KWD 1,185,321 (approximately USD 4,101,457) for payment or relief to others.

42. When reviewing claims for payment or relief to others the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports. (See, e.g., Fourth "E4" Report at paras. 61-63.)

43. Rumaithiya Cooperative Society states that it disposed "of part of its stock either by selling or supplying at no cost to some families who had no money." After the liberation of Kuwait the claimant continued distributing foodstuffs free of charge. This is supported by the post-liberation extraordinary loss provision in the claimant's audited accounts, which shows that food was given away free or distributed to citizens. Likewise, Al Sha'ab Cooperative Society granted "the citizens of [the] Al-Sha'ab area a social aid in the form [of] cash amounts as a relief payment[ ] due to the financial hardship resulting from the suspension of their income resources since the invasion took place." The Panel followed the same approach taken in the Second "E4" Report (para. 71) and the Fourth "E4" Report (para. 60.) and recommended no compensation for these claimants.

44. The Panel's recommendations on the payment or relief to others claims are summarized in annex II.

E. Loss of profits

45. Approximately 72 per cent of the claimants in this instalment submitted claims for loss of profits aggregating KWD 12,631,653 (approximately USD 43,708,142).

46. Four significant legal and factual issues raised in the first instalment claims are all raised in the tenth instalment claims. These issues relate to

the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

47. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

48. Despite several requests, some claimants in the tenth instalment did not provide annual accounts for the three fiscal years prior to and following the end of Iraq's invasion and occupation of Kuwait. The Panel noted that, in some cases, the failure to submit some accounts was sufficiently explained, for example, where the claimant had commenced trading in the period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

49. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

50. The Panel's recommendations on loss of profits claims are summarized in annex II.

F. Receivables

51. Twelve claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KWD 3,488,752 (approximately USD 12,071,806). A majority of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

52. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue raised is whether the uncollected debts had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

53. The Panel reiterates its determination on this issue as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and

amount of debt in question and the circumstances that caused the debt to become uncollectible.

54. The tenth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

55. As discussed above, the Panel recommends no award for claims that rely on the mere assertion that uncollected debts are ipso facto uncollectible because the debtors did not return to Kuwait. Nearly all of the claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see para. 17 above). While a number of responses were received from claimants, none satisfied the above criteria.

56. The Panel's recommendations on "bad debt" claims are summarized in annex II.

G. Restart costs

57. Thirteen claimants in this instalment asserted claims aggregating KWD 324,175 (approximately USD 1,121,713) for restart costs. The amounts claimed as restart costs have been reviewed using the methodology discussed in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report. (See also, Fourth "E4" Report, paras. 87-89.)

58. Shams Physiotherapy Centres Co. K.S.C. Closed seeks compensation for non-incremental salary, rent, subscription and other expenses. Likewise Kuwait Precast Systems Co. seeks compensation for non-incremental salaries and expenses. As noted in the First "E4" Report (see para. 223), claimants must establish that such restart payments are "extraordinary payments incurred as a direct result of Iraq's invasion and occupation." As the claimant has not provided sufficient evidence to demonstrate that these costs were incremental costs, the Panel recommends no compensation for these claims.

59. The Panel's recommendations on restart costs are summarized in annex II.

H. Other losses

60. A few claimants have sought compensation for losses suffered as a result of their receipt of cancelled Kuwaiti dinar currency notes. These notes were received by claimants who continued to operate during Iraq's occupation of Kuwait. The Panel recommends compensation for these claims for the reasons stated in paragraphs 98-99 of the Second "E4" Report.

61. In relation to claims for losses incurred when claimants were forced to accept Iraqi dinars for products sold during Iraq's invasion and occupation of Kuwait, at an exchange rate such as one Iraqi dinar to one Kuwaiti dinar, the Panel applied its recommendations stated in paragraphs 100-102 of the Second "E4" Report.

62. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, e.g., Second "E4" Report at para. 108 and Fourth "E4" Report at para. 103 dealing with the treatment of prepaid expenses.)

63. Industrial Investments Company K.S.C. seeks compensation for a loss on the sale of Kuwaiti dinars during the occupation. In its statement of claim, it avers that as a result of Iraq's invasion and occupation of Kuwait it was forced to sell Kuwaiti dinars for United States dollars in order to meet payments "toward committed investments and operating expenses". The claimant provided a schedule of the exchange rate in 1990, which demonstrated that the rate was increasingly favourable up to the date of the invasion. The claimant also provided some support for its cash requirements in order to substantiate the need to exchange the Kuwaiti dinars. The claimant exchanged the Kuwaiti dinars on 27 November 1990 at a rate of 0.333 USD for 1 KWD. The claimant states that the rate on the date of the invasion was 0.28749. In the Third "E4" Report, paras. 50-52, the Panel recommended compensation for the incremental and extraordinary cost of a claimant's early redemption of bonds during Iraq's occupation of Kuwait. These bonds were designated in Kuwaiti dinars, but because the currency was withdrawn from circulation at the time of the redemption, the redemption was in United States dollars. Likewise, the Panel recommends an award for this claimant after adjusting the claim to the approved exchange rate and for the risk of overstatement ordinarily associated with currency conversion.

64. Al Ahli Club of Kuwait for Tourism & Automobile Services W.L.L. entered into agreements with Jordanian and Egyptian customs authorities that allowed the claimant's clients to enter those countries with their cars maintaining their Kuwaiti license plates. The claimant was obliged to issue bank guarantees in favour of the customs authorities for penalties or fines incurred by the claimant's clients who stayed longer than permitted or who disposed of their vehicles improperly. The claimant states that as a result of Iraq's invasion and occupation of Kuwait, many clients sold their cars illegally in order to raise money, and as a consequence, the claimant was required to pay these customs guarantees. The Panel recommends awarding a portion of this claim for customs commitments after reducing the claim to the amount of the extraordinary loss provision in the December 1991 audited accounts and for the risk that not all of the sales occurred as a direct result of Iraq's invasion and occupation of Kuwait. (See, e.g., Second "E4"

Report, para. 104, recommended recovery of customs deposits with an adjustment made for the "risk of overstatement.")

65. International Shipping Agency Limited incurred costs to establish a temporary office in Dubai during Iraq's invasion and occupation of Kuwait. The Panel found such expenses to be incremental costs incurred as a direct result of Iraq's invasion and occupation of Kuwait. The claimant provided debit notes to support the payment of rent from 15 August 1990 through 30 April 1991; however, the claimant did not provide sufficient proof of payment for the remaining expenses. The Panel recommends an award for the amount of the claim supported by sufficient proof of payment.

66. Al Ahlia Hotel Supplies Co. W.L.L. asserts a claim for the "loss of customers' goods." The claimant states that it held goods at its warehouse that had already been purchased by its clients. These goods were destroyed during Iraq's invasion and occupation of Kuwait. Pursuant to a court order, the claimant states it had to reimburse its clients. Only one court order was provided, but it concerned goods that were purchased on 29 December 1984. Further, insufficient evidence was provided to demonstrate that the claimant reimbursed its clients. For these reasons, the Panel recommends no compensation for the claim.

67. The Panel's recommendations on other losses are summarized in annex II.

V. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

68. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

B. Claim preparation costs

69. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

VI. RECOMMENDED AWARDS

70. Based on the foregoing, the awards recommended by the Panel for claimants in the tenth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by 1 KWD.

Geneva, 10 July 2000

(Signed) Luiz Olavo Baptista
Chairman

(Signed) Jean Naudet
Commissioner

(Signed) Jianxi Wang
Commissioner

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00811	4003923	Hussain Ali Hassan & Partners Textiles Co./ Hussain Ali Hassan & Partner Textiles/ W.L.L.	243,154	217,667	159,533	551,590
E-00812	4002413	Bayan Cooperation Society	691,369	689,869	355,262	1,228,330
E-00813	4003924	Rumaithiya Cooperative Society	1,069,815	1,068,315	119,702	412,884
E-00814	4003925	Ghazwa Real Estate Co. W.L.L.	484,722	484,722	79,850	276,298
E-00815	4003926	Al Haddah Company for Mechanical and Constructional Contracting	186,602	185,602	149,960	517,461
E-00816	4003927	Gulf Coasts-Auto Parts & Tires Co.- Jala Khalid Fulaij Al-Fulaij & Partner W.L.L.	81,324	80,124	36,858	127,536
E-00817	4003928	Kuwait Animal Feed Factory Company	65,897	65,797	34,310	118,440
E-00818	4003929	Al Merri Foodstuff Co.	56,605	55,605	41,767	144,217
E-00821	4003932	Union Real Estate Co. Closed Shareholding Co.	2,189,520	2,189,520	193,131	667,947
E-00822	4003933	Reem Al Kuwait Ready-made Clothes Co.	91,610	90,610	60,715	210,087
E-00823	4003934	Al Shamali Works Co. for Tahini, Sweets & Nuts	82,239	82,239	66,201	228,611
E-00824	4003935	Al Bahar Center Co. for General Trading & Contracting	102,696	100,746	60,021	207,654
E-00825	4003936	Baby Look Company	44,764	44,764	32,929	113,941
E-00826	4003937	Al-Brooj General Trading & Cont. Co.	737,579	735,579	298,503	1,032,882
E-00827	4003938	Sabhan Aluminum Works Company	243,809	242,309	218,168	754,907
E-00828	4003960	Arab Building Industrial Resources Co.	502,778	501,278	335,118	1,158,322

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00829	4003961	Amiry International Food Co. W.L.L.	47,502	47,502	27,113	93,817
E-00831	4003963	Sayegh & Mallouhi Contracting Co.	151,816	149,816	77,924	269,633
E-00832	4003964	Ardhiya International for General Trade & Contracting Co. Limited Partnership	507,795	504,180	408,118	1,411,626
E-00833	4003965	Emad Shipping Agencies Co. W.L.L.	98,927	98,927	91,252	315,455
E-00835	4003967	Al Mufeed Pharmaceutical & Food Stuff Co.	751,823	749,823	486,377	1,682,508
E-00836	4003968	Emad General Trading and Contracting Co.	59,792	59,792	47,367	163,900
E-00837	4003969	John Al Kuwait for Food, Fruit & Vegetables	36,083	34,868	15,599	53,872
E-00838	4003970	Mohamed Abdul Rahman Al Bahar & Partners	145,421	145,421	118,568	410,270
E-00839	4003971	Trafalgar General Trading Company	1,326,724	1,226,467	946,094	3,272,642
E-00840	4003972	Abdulkarim Abdul Rahman Al Audah & Sons Trading Co.	342,803	340,803	248,135	858,385
E-00841	4003973	Al Aqsa Used Cars Company W.L.L.	149,325	147,040	63,715	220,424
E-00842	4003974	Al Fahad Trading & Contracting Co. W.L.L.	2,704,848	2,379,058	156,914	542,955
E-00843	4003975	Fouadi Ready Made Clothes Co. W.L.L.	377,150	375,150	30,109	103,935
E-00844	4003976	Al Janah Al Arabi Company	138,466	138,466	81,093	280,468
E-00845	4003977	International Paint Kuwait	1,517,311	1,511,311	239,689	829,296
E-00846	4003978	Industrial Investments Company (K.S.C.)	626,524	626,524	317,781	1,096,789
E-00848	4003980	Al Ahli Club of Kuwait for Tourism & Automobile Services W.L.L.	2,787,504	2,785,354	937,268	3,237,796
E-00849	4003981	Ashknani Co. for Trading & Developing Color Films W.L.L.	287,041	287,041	212,695	735,969
E-00850	4003982	Al Fadli & Sons for Auto Parts, Manee Abdul Hadi Al Fadli & Sons Ltd.	86,541	86,141	8,444	29,173

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00852	4003983	Al Hasnaa Textile Company	473,280	473,280	170,620	589,881
E-00853	4003984	Bahman & Adlouni Trading & Contracting Co. W.L.L.	301,672	299,672	179,641	621,477
E-00854	4003985	Kuwait- Iran Shipping Co. (KSC)	199,867	199,867	17,473	60,460
E-00855	4003986	International Shipping Agency Limited	239,523	212,377	51,280	177,433
E-00857	4003988	Al Khaldiya Sport Co. W.L.L.	60,385	59,635	31,010	107,301
E-00858	4003989	Hamdan Aladwani Company	43,500	43,500	24,025	83,131
E-00859	4003990	National Fishing Company KSC - Closed	1,478,361	1,474,861	979,137	3,377,409
E-00861	4003940	Al Assriya Printing Press & Libraries Co. K.S.C (Closed)	170,023	168,523	102,059	353,145
E-00862	4003941	Al Magwa Trading & Contracting Co. Aisha Mubarak Alskar Al Nwaif & Partners W.L.L.	185,376	183,876	122,382	423,467
E-00863	4003942	Technical Electronic Instruments and Supply Co. W.L.L.	360,992	320,763	69,290	239,744
E-00865	4003944	Hassan Mansour International Co. W.L.L.	226,851	224,651	133,466	461,820
E-00867	4003946	Al Treef Textiles Co.	206,076	206,076	125,803	435,304
E-00868	4003947	Al Abeer Grand Restaurants Co. W.L.L.	68,647	67,897	38,416	132,927
E-00869	4003948	Kuwait Biscuit & Food Products Manufacturing Co.	200,883	200,688	146,881	508,239
E-00870	4003949	Yafa Trading and Contracting Co.	33,535	32,727	32,078	110,997
E-00871	4003950	Munawer and Sons General Trading & Contracting Co.	1,062,216	1,062,216	806,552	2,787,510

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00872	4003951	International Sound General Trading & Contracting Company	224,296	203,996	87,061	301,147
E-00873	4003952	Al Rass Health Center Co./Zaid Sulaiman Al Musallam	39,000	34,163	28,206	97,599
E-00874	4003953	Al Homaizi International Foodstuff Co. W.L.L.	2,126,373	1,796,321	278,324	963,059
E-00876	4003955	Al Sha'ab Co-operative Society	1,240,287	1,237,787	661,148	2,287,709
E-00877	4003956	Heirs of Saleh Moh'd Al-Saleh Co.	36,533	35,033	5,415	18,720
E-00880	4003959	Kuwait Auto Frames Manufacturing Co. W.L.L.	120,135	119,135	103,439	357,920
E-00881	4003991	Sulaieman Al Fahed & Mohmed Al Moosawi Trading Co. W.L.L.	49,699	49,199	26,276	90,866
E-00884	4003994	Kuwait Cotton Products Co.	265,826	262,826	38,501	133,221
E-00886	4003996	Khuwaimat Real Estate Co./Mohamed Sulaiman Ibrahim Al-Musallam	338,797	304,253	287,562	994,071
E-00887	4003997	Amarat Al-Seef Real Estate Company	136,286	136,286	131,045	452,057
E-00888	4003998	Al Sinan General Trading & Contracting Company	17,033	16,783	12,824	44,374
E-00889	4003999	G.T.C. Paint Company Ltd. Sager Y.Y. Al Sager & Co.	1,666,033	1,478,684	656,773	2,271,180
E-00890	4004000	Asfoor Kanary Restaurant Company	104,180	104,180	57,879	200,273
E-00891	4004009	Ayoub Hamad Al-Khamis and Sons Co.	78,883	78,883	58,726	203,204
E-00892	4004010	Al Wawan Cleaning & Building Company	170,888	170,888	90,122	311,143

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00893	4004011	Western Show Company for Furniture and Furnishing	294,462	294,462	189,501	655,713
E-00894	4004012	Walid Al Adsani & Partner Trading Co.	356,001	315,556	50,599	175,083
E-00895	4004013	Burhan Kuwaiti Industrial Co. W.L.L.	1,256,101	1,254,101	107,864	373,232
E-00896	4004014	Al Daleh Construction Limited Company	300,461	264,718	183,286	634,208
E-00897	4004015	Golden Gifts Advertising Co.	113,663	98,512	77,954	269,527
E-00899	4004017	Marafi International Company/Sadiq Haji Yacoob Marafi & Partner W.L.L.	273,920	265,568	160,527	555,457
E-00900	4004018	Queen's Jewellery Exhibition Co.	190,081	189,081	129,159	446,810
E-00901	4004019	International Sports Supplying Co.	30,197	27,154	17,183	59,457
E-00902	4004020	Kuwait German Maintenance and Supply Co. W.L.L.	150,785	150,785	6,780	23,460
E-00905	4004023	Mahmoud & Ahmed Ali Taifouni Gen. Trading & Cont. Co./Ahmed Ali Taifouni & Co.	138,680	138,680	79,370	273,802
E-00906	4004024	Shams Physiotherapy Centres Co. K.S.C. Closed	459,623	455,740	362,188	1,253,246
E-00907	4004025	Electronic Engineer's Co. Ltd	138,367	136,867	61,966	214,055
E-00908	4004026	Al Tashieed United, Consumer & Construction Materials Ltd. Co.	37,077	32,429	27,314	94,431
E-00910	4004028	Al Ahlia Hotel Supplies Co. W.L.L.	349,793	347,293	152,773	528,508
E-00911	4004029	Kuwait Precast Systems Company	2,013,048	2,004,548	1,235,688	4,274,941
E-00912	4004030	Radwan Maqamis & Sons Trading Co.	61,320	61,320	42,271	146,266
E-00913	4004053	Mraji Al-Enezi Co. for Transportation Clearance Goods & Commission Mraji Rabah Mashi Al-Enezi and Sons	313,925	311,925	246,293	852,225
E-00914	4004031	Aldhabi for Trading & Contracting Company	249,753	249,153	48,084	166,273
E-00915	4004032	Kuwait Metal Furniture Manufacturing Company	48,430	40,114	19,551	67,651

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00918	4004034	Abdulrahman Al Fares Sons Company	1,624,386	1,374,719	602,995	2,086,488
E-00920	4004036	Ahmed Yousuf Sager Trading Co. W.L.L.	19,073	18,073	4,420	15,256
E-00921	4004037	Abdulla Ahmed Al-Asfoor & Co. W.L.L.	292,246	291,746	109,059	377,367
E-00922	4004038	Al Hajry & Abu Ras for Readymade Clothes W.L.L.	238,362	233,362	140,443	485,962
E-00924	4004040	Al Faraj Electrical Material Showroom Company W.L.L.	166,207	165,807	66,386	229,709
E-00925	4004041	Sabhan Fruits & Foodstuffs Co. W.L.L.	158,481	158,181	28,488	98,574
E-00926	4004042	Hungry Falcon Restaurant Company	138,091	136,091	123,478	426,997
E-00927	4004043	Golden Beach Company Ltd.	76,046	63,531	50,825	175,865
E-00928	4004044	Kuwait Anfal Co.	155,169	153,169	77,231	267,126
E-00930	4004045	Pan Arab Travels Company W.L.L.	58,122	57,122	39,149	135,464
E-00931	4004046	Al Khonaini Al Katami Trading & Contracting Co. W.L.L.	773,408	768,392	428,808	1,483,070
E-00932	4004047	Al Siham Publishing & Advertising Company	53,944	47,219	33,776	116,778
E-00933	4004048	Kuwait Oxygen & Acetylene Company	435,677	430,077	185,932	643,363
E-00934	4004049	Abbas Trading Company W.L.L.	125,354	123,804	65,256	225,674
E-00935	4004050	Yacoub Y. Al-Nasrallah Sons Co.	258,007	256,807	136,295	471,187
E-00936	4004051	Al Shelehi Road and Oreinega Contracting Co.	104,037	102,037	84,148	291,009
E-00937	4004052	Hassan's Optician Company W.L.L.	1,261,709	1,256,709	877,880	3,037,647
E-00938	4004001	Arab Advertising Agency W.L.L.	102,261	101,111	73,172	253,038
E-00939	4004002	Naseeb Maritime Company	593,775	501,820	147,700	511,073
E-00940	4004003	Khalifa & Gazzawi Trdg. Co. Ltd.	763,674	711,186	517,054	1,789,114

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-00942	4004004	Constructions Materials Company, Abdul Aziz Al-Aly Al-Wazzan and Hamad A-Bu Hassan	159,264	133,980	116,658	403,661
E-00943	4004005	Future Kid for Games & Toys Co.	180,006	180,006	89,849	310,736
E-00944	4004006	Adel Opticals Company	220,786	193,081	54,492	188,217
E-00945	4004007	Abdul Ghafoor & Mohamed Hassan Tifoni Company	897,857	832,216	216,160	747,942
E-00947	4004054	Modern Diamond Company W.L.L.	48,770	47,770	19,862	68,627
E-00948	4004055	The Industrial Bldgs. & Const. Co. K.S.C. (Closed)	1,479,463	1,471,788	1,088,631	3,766,889
E-00949	4004056	Kuwait City Restaurant Co.	108,558	106,858	92,987	321,007
E-00950	4004057	Ahmed Saleh Al Shaya & Partner Co. W.L.L.	551,018	548,518	416,813	1,442,260
E-00951	4004058	The Kuwait Book Shops Co.	322,790	321,390	199,526	690,040
E-00952	4004059	Mohammed Taleb & Muneri for Foodstuff Co.	275,678	274,928	121,463	420,171
E-00953	4004060	Safi International General Trading Company	31,149	28,899	21,674	74,939
E-00954	4004061	Kuwaiti Italian Maintenance Construction & Electric Contracting Co. W.L.L.	1,043,932	1,023,764	447,057	1,546,370
E-00955	4004062	Eiffel Technical Products & Distribution	77,320	77,320	41,685	144,239
E-00956	4004063	Behbehani Motors Company	2,039,792	1,776,674	667,786	2,310,676
E-00957	4004064	Al Wahid Money Exchange Co. W.L.L.	438,665	438,665	0	0
E-00958	4004065	Al Mowasat Hospital Mohd Abdul Aziz Alwazzan & Partners Company	457,230	455,230	120,360	415,964
E-00960	4004067	Al Asousi & Abu Hamad Industrial Tools Co.	32,646	31,516	27,280	94,238
E-00961	4004068	River Barody Equipment Co.	1,906,388	1,906,388	459,106	1,588,602
E-00962	4004069	Raad Abdul Razzaq Al Ibrahim and Ghulam	144,854	144,854	97,694	338,014
E-00964	4004071	Alexandria Ready-Made Garments W.L.L.	138,745	138,495	29,737	102,808

Annex I

Recommended awards for tenth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD)**	Amount recommended (KWD)	Amount recommended (USD)
E-02662	4005768	Al Bairaq Al Zahaby Co. for Readymade Clothes/Badriya Khalaf & Partner	24,568	22,568	15,056	52,097
Total			55,696,510	53,531,333	23,644,419	81,769,411

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* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less the amount claimed for claim preparation costs and interest. As set forth in paragraphs 68 and 69 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Hussain Ali Hassan & Partner Textiles Co./Hussain Ali Hassan & Partner Textiles/W.L.L.
UNCC claim number: 4003923
UNSEQ number: E-00811

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	168,519	110,385	Original tangible property claim reclassified to loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	49,148	49,148	Recommend awarding claim in full.
TOTAL	217,667	159,533	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	24,487	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Bayan Cooperation Society
UNCC claim number:	4002413
UNSEQ number:	E-00812

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	574,069	268,412	Original tangible property claim reclassified to loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	115,800	86,850	Claim adjusted for evidentiary shortcomings.
TOTAL	689,869	355,262	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Rumaithiya Cooperative Society
UNCC claim number: 4003924
UNSEQ number: E-00813

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Payment or relief to others	908,713	0	Original tangible property claim reclassified to payment or relief to others. Claim adjusted as per paragraph 43 of the report.
Loss of profits	159,602	119,702	Claim adjusted for evidentiary shortcomings.
TOTAL	1,068,315	119,702	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ghazwa Real Estate Co. W.L.L.
UNCC claim number: 4003925
UNSEQ number: E-00814

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	201,947	79,850	Claim adjusted for evidentiary shortcomings and maintenance.
Loss of profits	282,775	0	Original loss of income producing property claim reclassified to loss of profits. Claim adjusted to reflect historical results.
TOTAL	484,722	79,850	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Haddah Company for Mechanical and Constructional Contracting
UNCC claim number:	4003926
UNSEQ number:	E-00815

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	23,830	19,064	Claim adjusted for maintenance.
Loss of profits	161,772	130,896	Claim adjusted to reflect historical results.
TOTAL	185,602	149,960	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Gulf Coasts - Auto Parts & Tires Co.- Jala Khalid Fulaij Al-Fulaij & Partner W.L.L.
UNCC claim number:	4003927
UNSEQ number:	E-00816

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	4,936	3,949	Original tangible property claim reclassified to loss of stock and loss of tangible property. Claim adjusted for evidentiary shortcomings.
Loss of stock	75,188	32,909	Claim adjusted for evidentiary shortcomings and obsolescence.
TOTAL	80,124	36,858	

Claim preparation costs	1,200	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Animal Feed Factory Company
UNCC claim number: 4003928
UNSEQ number: E-00817

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	3,000	1,500	Original restart costs claim reclassified to loss of real property. Claim adjusted for depreciation.
Loss of tangible property	666	543	Claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	30,151	6,671	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	31,980	25,596	Claim adjusted to reflect one-year indemnity period.
TOTAL	65,797	34,310	

Claim preparation costs	100	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Merri Foodstuff Co.
UNCC claim number: 4003929
UNSEQ number: E-00818

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	15,915	8,750	Claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings.
Loss of stock	11,730	5,057	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	27,960	27,960	Recommend awarding claim in full.
TOTAL	55,605	41,767	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Union Real Estate Co. Closed Shareholding Co.
UNCC claim number: 4003932
UNSEQ number: E-00821

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	977,665	98,956	Original loss of tangible property reclassified to loss of real property. Claim adjusted for evidentiary shortcomings and maintenance.
Loss of profits	1,128,158	29,868	Original loss of income producing property and payment of relief to others reclassified to loss of profits. Claim adjusted to reflect historical levels.
Bad debts	5,214	0	Insufficient evidence to substantiate claim.
Restart costs	75,815	64,307	Claim adjusted for evidentiary shortcomings.
Other loss not categorised	2,668	0	Claim adjusted as per paragraph 62 of the report.
TOTAL	2,189,520	193,131	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Reem Al Kuwait Ready-made Clothes Co.
UNCC claim number:	4003933
UNSEQ number:	E-00822

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	7,465	7,465	Original claim reclassified as loss of tangible property and loss of stock. Recommend awarding claim in full.
Loss of stock	49,245	39,810	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	33,900	13,440	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	90,610	60,715	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Shamali Works Co. for Tahini, Sweets & Nuts
UNCC claim number: 4003934
UNSEQ number: E-00823

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	9,074	7,259	Claim adjusted for maintenance.
Loss of tangible property	8,676	3,898	Original claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings and depreciation.
Loss of stock	22,642	13,197	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	41,847	41,847	Recommend awarding claim in full.
TOTAL	82,239	66,201	

Annex II

Recommended awards for the tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Bahar Center Co. for General Trading & Contracting
UNCC claim number:	4003935
UNSEQ number:	E-00824

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	12,645	11,361	Original tangible property claim reclassified as loss of tangible property, loss of vehicles, and loss of stock. Claim adjusted for depreciation.
Loss of stock	72,943	44,389	Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up.
Loss of vehicles	1,285	729	Claim adjusted for evidentiary shortcomings.
Loss of profits	13,873	3,542	Claim adjusted to reflect historical results.
TOTAL	100,746	60,021	

Claim preparation costs	1,950	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Baby Look Company
UNCC claim number:	4003936
UNSEQ number:	E-00825

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	15,414	13,823	Original claim reclassified to loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	21,209	12,953	Claim adjusted for evidentiary shortcomings, overstocking and obsolescence.
Loss of profits	8,141	6,153	Claim adjusted to reflect historical results.
TOTAL	44,764	32,929	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al-Brooj General Trading & Cont. Co.
UNCC claim number:	4003937
UNSEQ number:	E-00826

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	300,000	240,000	Claim adjusted for maintenance.
Loss of tangible property	73,640	58,503	Original loss of tangible property claim reclassified to loss of tangible property and loss of cash. Claim adjusted for depreciation and failure to repair/replace.
Loss of cash	10,243	0	Insufficient evidence to substantiate claim.
Loss of profits	351,696	0	Claim adjusted to reflect historical results.
TOTAL	735,579	298,503	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sabhan Aluminum Works Company
UNCC claim number: 4003938
UNSEQ number: E-00827

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,966	1,966	Original claim reclassified to loss of tangible property, loss of stock and loss of cash. Recommend awarding claim in full.
Loss of stock	238,780	214,902	Claim adjusted for obsolescence.
Loss of cash	63	0	Insufficient evidence to substantiate claim.
Loss of vehicles	1,500	1,300	Claim adjusted to reflect a mathematical error.
TOTAL	242,309	218,168	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Arab Building Industrial Resources Co.
UNCC claim number: 4003960
UNSEQ number: E-00828

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	87,040	60,895	Claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	184,189	97,033	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for failure to repair/replace and depreciation.
Loss of stock	105,730	62,434	Claim adjusted for stock build-up, overstocking and obsolescence.
Loss of profits	124,319	114,756	Claim adjusted to reflect one-year indemnity period.
TOTAL	501,278	335,118	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Amiry International Food Co. W.L.L.
UNCC claim number:	4003961
UNSEQ number:	E-00829

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	3,674	3,257	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation.
Loss of stock	40,676	22,139	Claim adjusted for obsolescence and for evidentiary shortcomings.
Loss of vehicles	3,152	1,717	Claim adjusted to reflect M.V.V. Table values.
TOTAL	47,502	27,113	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sayegh & Mallouhi Contracting Company
UNCC claim number: 4003963
UNSEQ number: E-00831

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	80,000	54,400	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of tangible property	61,066	15,266	Original claim reclassified as loss of tangible property and loss of vehicles. Claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of vehicles	8,750	8,258	Claim adjusted to reflect M.V.V. Table values.
TOTAL	149,816	77,924	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ardhiya International for General Trade & Contracting Co. Limited Partnership
UNCC claim number:	4003964
UNSEQ number:	E-00832

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	1,905	0	Original restart costs claim reclassified to loss of real property. Insufficient evidence to substantiate claim.
Loss of tangible property	336,141	276,349	Original claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	116,160	81,795	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of profits	49,974	49,974	Recommend awarding claim in full.
TOTAL	504,180	408,118	

Claim preparation costs	3,615	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Emad Shipping Agencies Co. W.L.L.
UNCC claim number: 4003965
UNSEQ number: E-00833

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,160	8,928	Claim adjusted for failure to repair/replace.
Loss of cash	5,443	0	Insufficient evidence to substantiate claim.
Loss of profits	82,324	82,324	Recommend awarding claim in full.
TOTAL	98,927	91,252	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Mufeed Pharmaceutical & Food Stuff Co
UNCC claim number:	4003967
UNSEQ number:	E-00835

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	577,823	314,377	Original claim of loss of tangible property reclassified to loss of stock. Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of profits	172,000	172,000	Recommend awarding claim in full.
TOTAL	749,823	486,377	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Emad General Trading and Contracting Co.
UNCC claim number: 4003968
UNSEQ number: E-00836

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	5,951	5,478	Claim adjusted for failure to repair/replace.
Loss of stock	53,841	41,889	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
TOTAL	59,792	47,367	

Annex 11

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	John Al Kuwait for Food, Fruit & Vegetables
UNCC claim number:	4003969
UNSEQ number:	E-00837

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	3,997	3,916	Original loss of tangible property claim reclassified to loss of tangible property, loss of stock and loss of cash. Claim adjusted for depreciation.
Loss of stock	3,450	2,242	Claim adjusted for obsolescence
Loss of cash	6,375	0	Insufficient evidence to substantiate claim
Loss of profits	21,046	9,441	Claim adjusted for evidentiary shortcomings and for historical results.
TOTAL	34,868	15,599	

Claim preparation costs	1,215	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mohamed Abdul Rahman Al Bahar & Partners
UNCC claim number:	4003970
UNSEQ number:	E-00838

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	7,996	4,720	A portion of original restart cost claim reclassified as loss of real property. Claim adjusted for evidentiary shortcomings, depreciation and maintenance.
Loss of tangible property	10,369	8,295	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for evidentiary shortcomings.
Loss of stock	120,375	102,318	Claim adjusted for evidentiary shortcomings.
Loss of cash	3,008	0	Insufficient evidence to substantiate claim.
Loss of vehicles	750	750	Recommend awarding claim in full.
Restart costs	2,923	2,485	Claim adjusted for evidentiary shortcomings.
TOTAL	145,421	118,568	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Trafalgar General Trading Company
UNCC claim number:	4003971
UNSEQ number:	E-00839

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	33,012	26,410	Claim adjusted for maintenance.
Loss of stock	970,207	824,676	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings.
Loss of profits	223,248	95,008	Claim adjusted to reflect historical results.
TOTAL	1,226,467	946,094	

Claim preparation costs	7,250	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	93,007	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abdulkarim Abdul Rahman Al-Audah & Sons Trading Co.
UNCC claim number:	4003972
UNSEQ number:	E-00840

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	281,403	188,735	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	59,400	59,400	Recommend awarding claim in full.
TOTAL	340,803	248,135	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Aqsa Used Cars Company W.L.L.
UNCC claim number: 4003973
UNSEQ number: E-00841

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	57,000	20,744	Original loss of tangible property claim reclassified as loss of stock, loss of cash and loss of vehicles. Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of cash	300	0	Insufficient evidence to substantiate claim.
Loss of vehicles	56,320	38,993	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
Loss of profits	18,412	3,978	Claim adjusted for windfall profits and to reflect historical results.
Bad debts	15,008	0	Insufficient evidence to substantiate claim.
TOTAL	147,040	63,715	

Claim preparation costs	2,285	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Fahad Trading & Contracting Co. W.L.L.
UNCC claim number: 4003974
UNSEQ number: E-00842

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	586,235	136,668	Original loss of tangible property claim reclassified to loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	1,666,511	0	Insufficient evidence to substantiate claim.
Loss of profits	126,312	20,246	Original loss of contracts claim reclassified as loss of profits. Claim adjusted to reflect historical levels and for evidentiary shortcomings.
TOTAL	2,379,058	156,914	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	320,790	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Fouadi Ready Made Clothes Co. W.L.L.
UNCC claim number:	4003975
UNSEQ number:	E-00843

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	14,491	7,422	Original loss of tangible property claim reclassified to loss of tangible property and loss of stock. Claim adjusted for failure to repair/replace and depreciation.
Loss of stock	112,702	0	Insufficient evidence to substantiate claim.
Loss of profits	47,957	22,687	Claim adjusted for evidentiary shortcomings and to reflect historical results.
TOTAL	175,150	30,109	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Janah Al Arabi Company
UNCC claim number:	4003976
UNSEQ number:	E-00844

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	78,020	69,116	Claim adjusted for evidentiary shortcomings.
Loss of profits	60,446	11,977	Claim adjusted to reflect historical results, for evidentiary shortcomings, and windfall profits.
TOTAL	138,466	81,093	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: International Paint Kuwait
UNCC claim number: 4003977
UNSEQ number: E-00845

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	12,222	7,822	Claim adjusted for maintenance and failure to repair/replace.
Loss of tangible property	367,563	44,710	Original claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings, depreciation and failure to repair/replace.
Loss of stock	324,509	66,955	Claim adjusted to reflect historical averages, obsolescence and evidentiary shortcomings.
Loss of vehicles	27,950	9,549	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
Loss of profits	492,856	110,653	Claim adjusted to reflect historical results.
Bad debts	286,211	0	Insufficient evidence to substantiate claim.
TOTAL	1,511,311	239,689	

Claim preparation costs	6,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Industrial Investments Company K.S.C.
UNCC claim number: 4003978
UNSEQ number: E-00846

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	804	804	Recommend awarding claim in full.
Loss of profits	410,041	255,843	A portion of the original payment or relief to others claim and other loss not categorised reclassified as loss of profits. Claim adjusted for evidentiary shortcomings.
Restart costs	549	549	A portion of the payment or relief to others claim reclassified to restart costs. Recommend awarding claim in full.
Other loss not categorised	215,130	60,585	Original loss of business transaction claim reclassified as other loss not categorised. Claim for temporary office expenses adjusted for evidentiary shortcomings. Remaining claim adjusted as per paragraph 63 of the report.
TOTAL	626,524	317,781	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahli Club of Kuwait for Tourism & Automobile Services W.L.L.
UNCC claim number: 4003980
UNSEQ number: E-00968

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	19,189	19,175	Original tangible property claim reclassified to loss of tangible property and loss of vehicles. Claim adjusted for failure to repair/replace.
Loss of cash	3,055	0	Insufficient evidence to substantiate claim.
Loss of vehicle	5,235	5,135	Claim adjusted to reflect M.V.V. Table value.
Loss of profits	1,817,002	488,583	Claim reclassified to include a portion from other loss not categorised. Claim adjusted to reflect historical results.
Bad debts	5,013	0	Insufficient evidence to substantiate claim.
Restart costs	91,255	0	Insufficient evidence to substantiate claim.
Other loss not categorised	844,405	424,375	Original other loss not categorised claim reclassified to loss of cash, loss of profits, loss of bad debts, loss due to restart of business and other loss not categorised. Claim adjusted as per paragraph 64 of the report.
TOTAL	2,785,154	937,268	

Claim preparation costs	2,150	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ashknani Co. for Trading and Developing Color Films W.L.L.
UNCC claim number:	4003981
UNSEQ number:	E-00849

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	259,398	200,526	Original loss of tangible property claim reclassified as loss of stock and loss of cash. Claim adjusted for stock build-up and obsolescence.
Loss of cash	9,450	0	Insufficient evidence to substantiate claim.
Loss of profits	18,193	12,169	Claim adjusted to reflect historical results and windfall profits.
TOTAL	287,041	212,695	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Fadli & Sons for Auto Parts, Manee Abdul Hadi Al Fadli & Sons Ltd
UNCC claim number:	4003982
UNSEQ number:	E-00850

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	4,070	3,256	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Claim adjusted for failure to repair/replace.
Loss of stock	65,407	0	Insufficient evidence to substantiate claim.
Loss of cash	5,136	0	Insufficient evidence to substantiate claim.
Loss of profits	11,528	5,188	Claim adjusted for evidentiary shortcomings and windfall profits.
TOTAL	86,141	8,444	

Claim preparation costs	400	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Hasnaa Textile Company
UNCC claim number:	4003983
UNSEQ number:	E-00852

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	388,720	124,945	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of profits	81,410	45,675	Claim adjusted for evidentiary shortcomings and to reflect historical results.
Other loss not categorised	3,150	0	Claim adjusted as per paragraph 62 of the report.
TOTAL	473,280	170,620	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Bahman & Adlouni Trading & Contracting Co. W.L.L.
UNCC claim number:	4003984
UNSEQ number:	E-00853

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	10,121	3,033	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of stock	263,520	165,797	Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of profits	26,031	10,811	Claim adjusted to reflect one-year indemnity period, windfall profits and evidentiary shortcomings.
TOTAL	299,672	179,641	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait - Iran Shipping Co. (KSC)
UNCC claim number:	4003985
UNSEQ number:	E-00854

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,000	2,233	Original loss of tangible property claim reclassified as loss of tangible property and loss of cash. Claim adjusted for evidentiary shortcomings, depreciation and failure to repair/replace.
Loss of cash	1,612	0	Insufficient evidence to substantiate claim.
Loss of profits	175,015	0	Original loss of profits claim reclassified to include original other loss not categorised and a portion of payment or relief to others. Claim adjusted to reflect historical results.
Other loss not categorised	15,240	15,240	Original portion of payment or relief to others claim reclassified to other loss not categorised. Recommend awarding claim in full.
TOTAL	199,867	17,473	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Shipping Agency Limited
UNCC claim number:	4003986
UNSEQ number:	E-00855

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	6,925	6,925	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Recommend awarding claim in full.
Loss of stock	1,100	935	Claim adjusted for evidentiary shortcomings.
Loss of cash	1,942	0	Insufficient evidence to support claim.
Loss of vehicles	13,979	12,096	Claim adjusted to reflect M.V.V. Table values.
Payment or relief to others	28,266	10,793	Claim adjusted for evidentiary shortcomings.
Loss of profits	62,581	1,860	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	26,645	0	Insufficient evidence to substantiate claim.
Restart costs	9,109	5,921	Claim adjusted for evidentiary shortcomings.
Other loss not categorised	61,830	12,750	Original other loss not categorised claim reclassified in part to loss of profit. Claim to establish an office in Dubai adjusted as per paragraph 65 and claim for cancelled Kuwaiti Dinar adjusted as per paragraph 60 of the report.
TOTAL	212,377	51,280	

Claim preparation costs	2,600	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	24,546	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Khaldiya Sport Co. W.L.L.
UNCC claim number: 4003988
UNSEQ number: E-00857

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	59,635	31,010	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
TOTAL	59,635	31,010	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Hamdan Aladwani Company
UNCC claim number: 4003989
UNSEQ number: E-00858

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	43,500	24,025	Original loss of tangible property claim reclassified as loss of vehicles. Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
TOTAL	43,500	24,025	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	National Fishing Company KSC - Closed
UNCC claim number:	4003990
UNSEQ number:	E-00859

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	278,167	154,348	Original loss of tangible property claim reclassified to loss of tangible property and loss of vehicles. Claim adjusted for evidentiary shortcomings, maintenance, failure to repair/replace and depreciation.
Loss of vehicles	4,907	3,827	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	1,191,787	820,962	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	1,474,861	979,137	

Claim preparation costs	3,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Aasriya Printing Press & Libraries Co. K.S.C. (Closed)
UNCC claim number: 4003940
UNSEQ number: E-00861

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	94,825	60,888	Claim adjusted for failure to repair/replace and maintenance.
Loss of tangible property	2,810	479	Original tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	70,888	40,892	Claim adjusted for evidentiary shortcomings and stock build-up.
TOTAL	168,523	102,259	

Claim preparation costs	1,500	n.a	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Magwa Trading & Contracting Co. Aisha Mubarak Alskar Al Nwaif & Partners W.L.L.
UNCC claim number:	4003961
UNSEQ number:	E-00862

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	10,000	10,000	A portion of original loss of tangible property reclassified as loss of contracts. Recommend awarding claim in full.
Loss of real property	9,110	7,354	Claim adjusted for maintenance.
Loss of tangible property	11,628	7,692	Original loss of tangible property claim reclassified as loss of contracts, loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for depreciation, maintenance and failure to repair/replace.
Loss of stock	92,861	46,405	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of cash	232	0	Insufficient evidence to substantiate claim.
Loss of vehicles	60,025	50,931	Claim adjusted to M.V.V. Table values and for maintenance.
TOTAL	183,876	122,182	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Technical Electronic Instruments and Supply Company W.L.L.
UNCC claim number:	4003942
UNSEQ number:	E-00863

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,309	26	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of stock	92,591	55,311	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of vehicles	8,968	8,968	Recommend awarding claim in full.
Loss of profits	165,052	1,609	Original loss of business transaction claim reclassified as loss of profits. Claim adjusted to reflect historical results and windfall profits.
Bad debts	43,142	0	Insufficient evidence to substantiate claim.
Restart costs	9,501	3,376	Claim adjusted for evidentiary shortcomings.
TOTAL	320,763	69,290	

Claim preparation costs	1,900	n.a.	Governing Council's determination pending. See paragraph 67 of the report.
Interest	14,329	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Hassan Mansour International Co. W.L.L.
UNCC claim number:	4003944
UNSEQ number:	E-00865

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	4,100	1,942	Original loss of income producing property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	208,158	127,022	A portion of original loss of income property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up.
Loss of profits	12,393	4,502	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	224,651	133,466	

Claim preparation costs	2,200	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Treef Textiles Co.
UNCC claim number: 4003946
UNSEQ number: E-00867

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,831	9,465	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for failure to repair/replace.
Loss of stock	151,171	84,436	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	43,074	31,902	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	206,076	125,803	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Abeer Grand Restaurants Co. W.L.L.
UNCC claim number:	4003947
UNSEQ number:	E-00868

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	17,404	12,091	Original claim reclassified as loss of tangible property, loss of vehicle, loss of stock and loss of cash. Claim adjusted for failure to repair/replace and for depreciation.
Loss of stock	49,628	26,325	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of cash	865	0	Insufficient evidence to substantiate claim.
TOTAL	67,897	38,416	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Biscuit & Food Products Manufacturing Co.
UNCC claim number:	4003948
UNSEQ number:	E-00869

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,147	1,853	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and other loss not categorised. Claim adjusted for maintenance and depreciation.
Loss of stock	192,649	142,753	Claim adjusted for obsolescence.
Loss of vehicle	1,000	1,000	Recommend awarding claim in full.
Loss of profits	3,221	0	Claim adjusted to reflect historical results.
Restart costs	1,500	1,275	Claim adjusted for evidentiary shortcomings.
Other loss not categorised	171	0	Insufficient evidence to substantiate claim.
TOTAL	200,688	146,881	

Claim preparation costs	195	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name	Yafa Trading and Contracting Co.
UNCC claim number	4003949
UNSEQ number	E-00870

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	10,518	10,381	Original loss of tangible property claim reclassified to loss of tangible property, loss of vehicles and loss of cash. Claim adjusted for evidentiary shortcomings.
Loss of cash	495	0	Insufficient evidence to support claim.
Loss of vehicles	1,714	1,697	Claim adjusted to reflect M.V.V. Table values.
TOTAL	12,727	12,078	

Claim preparation costs	808	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Munawer and Sons General Trading and Contracting Co
UNCC claim number:	4003950
UNSEQ number:	E-00871

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	99,235	43,663	Claim adjusted for depreciation, evidentiary shortcomings and failure to repair/replace.
Loss of tangible property	429,649	385,488	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted to reflect mathematical error, for depreciation and failure to repair/replace.
Loss of stock	97,823	68,695	Claim adjusted to reflect evidentiary shortcomings, historical averages and for obsolescence.
Loss of vehicles	4,656	4,578	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	430,853	304,128	Claim adjusted to reflect historical results.
TOTAL	1,062,216	806,552	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Sound General Trading & Contracting Company
UNCC claim number:	4003951
UNSEQ number:	E-00872

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	20,000	16,000	Claim adjusted for maintenance.
Loss of tangible property	24,101	5,379	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of stock	74,860	56,355	Claim adjusted for stock build-up and obsolescence.
Loss of profits	28,542	9,327	Claim adjusted to reflect historical results, for evidentiary shortcomings and windfall profits.
Bad debts	56,493	0	Insufficient evidence to substantiate claim.
TOTAL	203,996	87,061	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	15,300	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Rass Health Center Co./Zaid Sulaiman Al Musallam
UNCC claim number:	4003952
UNSEQ number:	E-00873

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	8,556	2,720	Original loss due to restart costs claim reclassified as loss of real property. Claim adjusted for evidentiary shortcomings and for maintenance.
Loss of tangible property	25,607	25,486	Claim adjusted for depreciation.
TOTAL	34,163	28,206	

Claim preparation costs	1,400	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	3,437	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Homaizi International Foodstuff Company W.L.L.
UNCC claim number:	4003953
UNSEQ number:	E-00874

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	59,665	59,541	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for depreciation.
Loss of stock	1,047,226	189,328	Claim adjusted for stock build-up, overstocking, obsolescence and evidentiary shortcomings.
Loss of cash	2,586	0	Insufficient evidence to substantiate claim.
Loss of vehicles	37,705	29,455	Claim adjusted to reflect M.V.V. Table values.
Bad debts	649,139	0	Insufficient evidence to substantiate claim.
TOTAL	1,796,321	278,324	

Claim preparation costs	4,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	325,552	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Sha'ab Co-operative Society
UNCC claim number:	4003955
UNSEQ number:	E-00876

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	57,777	41,589	Original loss of tangible property claim reclassified to loss of stock and other loss not categorised. Claim adjusted for evidentiary shortcomings and depreciation.
Loss of stock	87,175	36,832	Claim adjusted for evidentiary shortcomings and obsolescence.
Payment or relief to others	207,220	0	Claim adjusted as per paragraph 43 of the report.
Loss of profits	338,032	252,108	Claim adjusted for evidentiary shortcomings and to historical levels.
Other loss not categorised	547,583	330,619	Claim adjusted as per paragraphs 60-61 of the report.
TOTAL	1,237,787	661,148	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Heirs of Saleh Moh'd Al-Saleh Co.
UNCC claim number:	4003956
UNSEQ number:	E-00877

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	32,933	3,840	Original loss of tangible property claim reclassified to loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	2,100	1,575	Claim adjusted for evidentiary shortcomings.
TOTAL	35,033	5,415	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraphs 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Auto Frames Manufacturing Co. W.L.L.
UNCC claim number: 4003959
UNSEQ number: E-00880

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	29,100	23,280	Claim adjusted for maintenance.
Loss of tangible property	4,040	2,249	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	79,905	71,914	Claim adjusted for obsolescence.
Loss of vehicles	6,090	5,996	Claim adjusted for evidentiary shortcomings and for maintenance.
TOTAL	119,135	103,439	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Sulaieman Al Fahed & Mohmed Al Moosawi Trading Co. W.L.L.
UNCC claim number:	4003991
UNSEQ number:	E-00881

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	65	52	Original loss of income producing property reclassified to loss of stock, loss of cash and loss of tangible property. Claim adjusted for failure to repair/replace.
Loss of stock	38,004	21,229	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of cash	1,140	0	Insufficient evidence to substantiate claim.
Loss of profits	9,990	4,995	Claim adjusted for evidentiary shortcomings and to reflect one-year indemnity period.
TOTAL	49,199	26,276	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Cotton Products Co.
UNCC claim number:	4003994
UNSEQ number:	E-00884

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	143,400	0	Original loss of business transaction claim reclassified to loss of stock, loss of tangible property and loss of contract. Claim adjusted for evidentiary shortcomings, including no evidence of repudiation or cancellation of the contract.
Loss of real property	10,099	5,049	Claim adjusted for maintenance.
Loss of tangible property	16,257	6,826	Claim adjusted for evidentiary shortcomings and depreciation.
Loss of stock	93,070	26,626	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
TOTAL	262,826	38,501	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Khuwaimat Real Estate Co. / Mohamed Sulaiman Ibrahim Al-Musallam
UNCC claim number:	4003996
UNSEQ number:	E-00886

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	28,890	21,922	Original restart costs claim reclassified to loss of real property. Claim adjusted for depreciation and maintenance.
Payment or relief to others	9,723	0	Insufficient evidence to substantiate claim.
Loss of profits	265,640	265,640	Recommend awarding claim in full.
TOTAL	304,253	287,562	

Claim preparation costs	2,400	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	32,144	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Amarat Al-Seef Real Estate Company
UNCC claim number:	4003997
UNSEQ number:	E-00887

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	8,072	4,389	Original loss of real property claim reclassified to loss of real property and loss of profits. Claim adjusted for evidentiary shortcomings, depreciation and maintenance.
Loss of profits	128,214	126,656	Claim adjusted to reflect one-year indemnity period.
TOTAL	136,286	131,045	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Sinan General Trading & Contracting Company
UNCC claim number: 4003998
UNSEQ number: E-00888

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	16,783	12,824	Claim adjusted for evidentiary shortcomings, depreciation and failure to repair/replace.
TOTAL	16,783	12,824	

Claim preparation costs	250	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	G.T.C. Paint Company Ltd. Sager Y.Y. Al Sager & Co.
UNCC claim number:	4003999
UNSEQ number:	E-00889

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	74,158	56,431	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of vehicles and other loss not categorised. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	22,131	0	Insufficient evidence to substantiate claim.
Loss of vehicles	12,300	11,311	Claim adjusted to reflect M.V.V. table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Payment or relief to others	18,603	1,570	A portion of original loss of payment or relief to others reclassified as loss of profits. Claim adjusted for evidentiary shortcomings.
Loss of profits	825,065	523,240	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	393,279	0	Insufficient evidence to substantiate claim.
Restart costs	3,234	2,102	A portion of original loss due to restart costs claim reclassified as loss of profits. Claim adjusted for evidentiary shortcomings.
Other loss not categorised	129,914	62,119	Recommend awarding claim for "Loss on forced sale of stock" in full. Other losses adjusted as per paragraphs 60-61 of the report.
TOTAL	1,478,684	656,773	

Claim preparation costs	21,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	166,349	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Asfoor Kanary Restaurant Company
UNCC claim number:	4004000
UNSEQ number:	E-00890

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	27,960	27,960	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Recommend awarding claim in full.
Loss of stock	30,210	10,049	Claim adjusted for stock build-up and obsolescence.
Loss of cash	3,962	0	Insufficient evidence to support claim.
Payment or relief to others	3,782	3,782	Original loss due to payment or relief to others claim reclassified as loss due to payment or relief to others and loss of profits. Recommend awarding claim in full.
Loss of profits	38,266	16,088	Claim adjusted to reflect historical results.
TOTAL	104,180	57,879	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ayoub Hamad Al-Khamis and Sons Co.
UNCC claim number:	4004009
UNSEQ number:	E-00891

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	66,368	53,094	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence.
Loss of profits	12,515	5,632	Claim is adjusted for evidentiary shortcomings and for windfall profits.
TOTAL	78,883	58,726	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Wawan Cleaning & Building Company
UNCC claim number: 4004010
UNSEQ number: E-00892

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	100,956	26,378	Claim adjusted for depreciation and failure to repair/replace.
Loss of profits	69,932	63,744	Claim adjusted to reflect historical results.
TOTAL	170,888	90,122	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Western Show Company for Furniture and Furnishing
UNCC claim number: 4004011
UNSEQ number: E-00893

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	285,642	189,501	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	8,820	0	Claim adjusted to reflect historical results.
TOTAL	294,462	189,501	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Walid Al Adsani & Partner Trading Co.
UNCC claim number:	4004012
UNSEQ number:	E-00894

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	232,069	0	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Insufficient evidence to substantiate claim.
Loss of vehicles	34,015	20,251	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. table values.
Loss of profits	49,472	30,348	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	315,556	50,599	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	39,445	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Burhan Kuwaiti Industrial Company W.L.L.
UNCC claim number:	4004013
UNSEQ number:	E-00895

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	12,000	9,600	Original loss due to restart costs claim reclassified as loss of real property. Claim adjusted for maintenance.
Loss of tangible property	122,830	98,264	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for failure to repair/replace.
Loss of stock	1,119,271	0	Insufficient evidence to support claim.
TOTAL	1,254,101	107,864	
Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Daleh Construction Limited Company
UNCC claim number:	4004014
UNSEQ number:	E-00896

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	128,505	60,736	Claim adjusted for evidentiary shortcomings, depreciation and failure to repair/replace.
Loss of tangible property	48,254	45,874	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property, loss of cash and loss of vehicles. Claim adjusted for failure to repair/replace.
Loss of cash	7,280	0	Insufficient evidence to substantiate claim.
Loss of vehicles	34,607	30,604	Claim adjusted to reflect M.V.V. table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Loss of profits	46,072	46,072	Recommend awarding claim in full.
TOTAL	264,718	183,286	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	34,743	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Golden Gifts Advertising Co.
UNCC claim number:	4004015
UNSEQ number:	E-00897

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	15,094	12,075	Claim adjusted for failure to repair/replace.
Loss of stock	61,018	46,679	Original loss of income producing property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	22,400	19,200	Claim adjusted to reflect one-year indemnity period.
TOTAL	98,512	77,954	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	14,401	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Marafi International Company / Sadiq Haji Yacoob Marafi & Partner W.L.L.
UNCC claim number:	4004017
UNSEQ number:	E-00899

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	265,568	160,527	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
TOTAL	265,568	160,527	

Claim preparation costs	8,352	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Queen's Jewellery Exhibition Co.
UNCC claim number:	4004018
UNSEQ number:	E-00900

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	162,844	119,390	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted to historical levels and for stock build-up.
Loss of profits	26,237	9,769	Claim adjusted for evidentiary shortcomings, to reflect historical results and for windfall profits.
TOTAL	189,081	129,159	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Sports Supplying Co.
UNCC claim number:	4004019
UNSEQ number:	E-00901

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	902	717	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	25,727	16,466	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	525	0	Claim adjusted to reflect historical results.
TOTAL	27,154	17,183	

Claim preparation costs	3,043	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait German Maintenance and Supply Co. W.L.L.
UNCC claim number:	4004020
UNSEQ number:	E-00902

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	150,785	6,780	Claim adjusted for depreciation and evidentiary shortcomings.
TOTAL	150,785	6,780	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mahmoud & Ahmed Ali Taifouni Gen. Trading & Cont. Co. / Ahmed Ali Taifouni & Co.
UNCC claim number:	4004023
UNSEQ number:	E-00905

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	5,636	3,063	Original loss of real property claim reclassified as loss of real property and loss of profits. Claim adjusted for maintenance and depreciation.
Loss of profits	133,044	76,307	Claim adjusted to reflect historical results.
TOTAL	138,680	79,370	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Shams Physiotherapy Centres Co. K.S.C. Closed
UNCC claim number:	4004024
UNSEQ number:	E-00906

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	378,888	362,188	Original other loss not categorised claim reclassified as loss of contracts. Recommend awarding claims for "Engineering and design agreement" and "Medical equipment" in full. Remaining claims adjusted for evidentiary shortcomings.
Restart costs	76,852	0	Claim adjusted as per paragraph 58 of the report.
TOTAL	455,740	362,188	

Claim preparation costs	3,883	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Electronic Engineer's Co., Ltd
UNCC claim number:	4004025
UNSEQ number:	E-00907

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	87,428	28,999	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings, for stock build-up, overstocking and obsolescence.
Loss of profits	49,439	32,967	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	136,867	61,966	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Tashieed United, Consumer & Construction Materials Limited Co.
UNCC claim number:	4004026
UNSEQ number:	E-00908

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	19,955	17,959	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence.
Loss of profits	12,474	9,355	Claim adjusted for windfall profits.
TOTAL	32,429	27,314	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	3,648	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahlia Hotel Supplies Co. W.L.L.
UNCC claim number: 4004028
UNSEQ number: E-00910

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	228,176	119,903	Original loss of tangible property claim reclassified as loss of stock and other loss not categorised. Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of profits	38,458	32,870	Claim adjusted to reflect historical results.
Other loss not categorised	80,659	0	Claim adjusted as per paragraph 66 of the report.
TOTAL	347,293	152,773	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Precast Systems Company
UNCC claim number:	4004029
UNSEQ number:	E-00911

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	1,002,556	551,406	Claim adjusted for evidentiary shortcomings.
Loss of real property	29,205	19,258	Claim adjusted for failure to repair/replace, evidentiary shortcomings, depreciation and maintenance.
Loss of tangible property	134,862	104,994	Original tangible property claim reclassified in part to loss of vehicles, loss of real property, loss of stock and loss of cash. Claim adjusted for depreciation, evidentiary shortcomings, failure to repair/replace and maintenance.
Loss of stock	470,368	374,852	Claim adjusted for stock build-up and obsolescence.
Loss of cash	3,860	0	Insufficient evidence to substantiate claim.
Loss of vehicles	120,605	112,301	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Payment or relief to others	279	139	Claim adjusted for evidentiary shortcomings.
Loss of profits	174,195	72,738	Claim adjusted to reflect historical results and windfall profits.
Restart costs	41,558	0	Original loss due to restart costs claim reclassified in part to loss of profits, loss of real property, loss of tangible property and payment or relief to others. Claim adjusted as per paragraph 58 of the report.
Other loss not categorised	27,060	0	Original other loss not categorised claim reclassified in part to loss of profits and loss of contract. Claim adjusted as per paragraph 62 of the report.
TOTAL	2,004,548	1,235,688	

Claim preparation costs	8,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Radwan Maqamis and Sons Trading Co.
UNCC claim number: 4004030
UNSEQ number: E-00912

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	43,200	34,560	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence.
Loss of profits	18,120	7,711	Claim adjusted to reflect historical results, evidentiary shortcomings and for windfall profits
TOTAL	61,320	42,271	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mraji Al Enezi Co. for Transportation Clearance Goods & Commission
UNCC claim number:	4004053
UNSEQ number:	E-00913

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of vehicles	151,800	86,168	Original loss of tangible property claim reclassified as loss of vehicles. Claim adjusted for evidentiary shortcomings and as per paragraph 39 of the report.
Loss of profits	160,125	160,125	Recommend awarding claim in full.
TOTAL	311,925	246,293	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Aldhabi for Trading & Contracting Company
UNCC claim number:	4004031
UNSEQ number:	E-00914

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	11,336	7,737	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash and gold. Claim adjusted for evidentiary shortcomings and depreciation.
Loss of stock	170,000	0	Insufficient evidence to substantiate claim.
Loss of cash and gold	3,985	0	Insufficient evidence to substantiate claim.
Loss of profits	40,896	40,347	Claim adjusted to reflect historical results.
Other loss not categorised	22,936	0	Claim adjusted as per paragraph 62 of the report.
TOTAL	249,153	48,084	

Claim preparation costs	600	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Metal Furniture Manufacturing Company
UNCC claim number: 4004032
UNSEQ number: E-00915

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	24,216	19,373	Claim adjusted for evidentiary shortcomings.
Loss of stock	15,688	0	Original loss of tangible property reclassified as loss of stock. Insufficient evidence to substantiate claim.
Restart costs	210	178	Claim adjusted for evidentiary shortcomings.
TOTAL	40,114	19,551	

Claim preparation costs	1,084	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	7,232	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abdulrahman Al Fares Sons Company
UNCC claim number:	4004034
UNSEQ number:	E-00918

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	77,521	58,397	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings, depreciation, and failure to repair/replace.
Loss of stock	1,271,361	522,317	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	20,405	17,664	Claim adjusted to reflect M.V.V. table values.
Restart costs	5,432	4,617	Original loss due to restart costs claim reclassified as loss due to restart costs and loss of tangible property. Claim adjusted for evidentiary shortcomings.
TOTAL	1,374,719	602,995	

Claim preparation costs	4,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	245,667	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ahmed Yousuf Sager Trading Co. W.L.L.
UNCC claim number: 4004036
UNSEQ number: E-00920

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of profits	18,073	4,420	Claim adjusted for evidentiary shortcomings, to reflect historical results and for windfall profits.
TOTAL	18,073	4,420	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abdullah Ahmed Al-Asfoor & Company W.L.L.
UNCC claim number: 4004037
UNSEQ number: E-00921

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	291,746	109,059	Original tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
TOTAL	291,746	109,059	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Hajry & Abu Ras for Readymade Clothes W.L.L.
UNCC claim number: 4004038
UNSEQ number: E-00922

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	203,138	117,775	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence.
Loss of profits	30,224	22,668	Claim adjusted for evidentiary shortcomings.
TOTAL	233,362	140,443	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Faraj Electrical Material Showroom Company W.L.L.
UNCC claim number:	4004040
UNSEQ number:	E-00924

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	165,807	66,386	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
TOTAL	165,807	66,386	

Claim preparation costs	400	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Sabhan Fruits & Foodstuffs Co. W.L.L.
UNCC claim number:	4004041
UNSEQ number:	E-00925

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	3,325	3,324	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	154,856	25,164	Claim adjusted for evidentiary shortcomings and obsolescence.
TOTAL	158,181	28,488	

Claim preparation costs	300	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Hungry Falcon Restaurant Company
UNCC claim number:	4004042
UNSEQ number:	E-00926

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	47,619	41,106	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for maintenance and depreciation.
Loss of stock	11,686	7,596	Claim adjusted for obsolescence.
Loss of vehicle	3,515	1,505	Claim adjusted to reflect M.V.V. table values.
Loss of profits	73,271	73,271	Recommend awarding claim in full.
TOTAL	136,091	123,478	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Golden Beach Company Ltd.
UNCC claim number: 4004043
UNSEQ number: E-00927

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	63,531	50,825	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
TOTAL	63,531	50,825	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	11,515	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

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Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Anfal Co.
UNCC claim number:	4004044
UNSEQ number:	E-00928

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	6,107	5,238	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation.
Loss of stock	130,150	59,193	Claim adjusted for stock build-up and obsolescence.
Loss of vehicles	2,800	2,800	Recommend awarding claim in full.
Loss of profits	14,112	10,000	Claim adjusted for evidentiary shortcomings.
TOTAL	153,169	77,231	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Pan Arab Travels Company W.L.L.
UNCC claim number:	4004045
UNSEQ number:	E-00930

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	32,671	18,366	Original loss of tangible property claim reclassified as loss of tangible property and other loss not categorised. Claim adjusted for depreciation and failure to repair/replace.
Other loss not categorised	24,451	20,783	Claim adjusted for evidentiary shortcomings.
TOTAL	57,122	39,149	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Khonaini Al Katami Trading and Contracting Co. W.L.L.
UNCC claim number: 4004046
UNSEQ number: E-00931

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	154,578	70,191	Claim adjusted for maintenance, evidentiary shortcomings and failure to repair/replace.
Loss of tangible property	6,138	4,895	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	478,380	252,547	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	22,697	21,226	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Loss of profits	106,599	79,949	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	768,392	428,808	

Claim preparation costs	5,016	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Siham Publishing & Advertising Company
UNCC claim number: 4004047
UNSEQ number: E-00932

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,010	7,594	Claim adjusted for depreciation.
Loss of profits	39,209	26,182	Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	47,219	33,776	

Claim preparation costs	6,725	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Oxygen & Acetylene Company
UNCC claim number:	4004048
UNSEQ number:	E-00933

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	173,937	114,151	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	156,887	67,510	Claim adjusted for evidentiary shortcomings and obsolescence.
Bad debts	99,253	4,271	Claim adjusted for evidentiary shortcomings.
TOTAL	430,077	185,932	

Claim preparation costs	5,690	n.a.	Governing Council's determination pending. See paragraph 69 of the report

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abbas Trading Company W.L.L.
UNCC claim number:	4004049
UNSEQ number:	E-00934

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	3,321	2,097	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	97,305	48,384	Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence.
Loss of vehicles	7,000	3,351	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	16,178	11,424	Claim adjusted to reflect a one-year indemnity period.
TOTAL	123,804	65,256	

Claim preparation costs	1,550	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Yacoub Y. Al Nasrallah Sons Co.
UNCC claim number:	4004058
UNSEQ number:	E-00935

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	1,580	1,580	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Recommend awarding claim in full.
Loss of stock	186,452	84,278	Claim adjusted to reflect historical levels and for evidentiary shortcomings.
Loss of cash	6,715	6,715	Recommend awarding claim in full.
Loss of vehicles	5,600	5,110	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	56,460	38,612	Claim adjusted to reflect historical results.
TOTAL	256,807	136,295	

Claim preparation costs	3,200	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Shelehi Road and Oreinega Contracting Co.
UNCC claim number: 4004051
UNSEQ number: E-00936

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	48,432	38,746	Original loss of tangible property claim reclassified as loss of tangible property and loss of vehicles. Claim adjusted for failure to repair/replace.
Loss of vehicles	34,050	30,736	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Loss of profits	19,555	14,666	Claim adjusted for evidentiary shortcomings.
TOTAL	102,037	84,148	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Hassan's Optician Company W.L.L.
UNCC claim number:	4004052
UNSEQ number:	E-00937

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	46,089	36,871	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings.
Loss of stock	1,097,420	790,069	Claim adjusted for stock build-up and obsolescence.
Loss of profits	113,200	50,940	Claim adjusted for evidentiary shortcomings.
TOTAL	1,256,709	877,880	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Arab Advertising Agency W.L.L.
UNCC claim number:	4004001
UNSEQ number:	E-00938

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	44,431	30,662	Claim adjusted for depreciation and failure to repair/replace.
Loss of profits	56,680	42,510	Claim adjusted for evidentiary shortcomings.
TOTAL	101,111	73,172	

Claim preparation costs	1,150	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Naseeb Maritime Company
UNCC claim number:	4004002
UNSEQ number:	E-00939

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	26,500	20,700	Original loss of tangible property claim reclassified as loss of real property and loss of vehicles. Claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	467,320	119,000	Claim adjusted for evidentiary shortcomings and depreciation.
Loss of vehicles	8,000	8,000	Recommend awarding claim in full.
TOTAL	501,820	147,700	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	90,955	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Khalifa & Gazzawi Trdg. Co. Ltd.
UNCC claim number: 4004003
UNSEQ number: E-00940

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	656,451	502,185	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of vehicle	12,000	8,026	Claim adjusted to reflect M.V.V. Table value.
Payment or relief to others	8,735	5,678	Original payment or relief to others claim reclassified to loss of profits and payment or relief to others. Claim adjusted for evidentiary shortcomings.
Loss of profits	34,000	1,165	Claim adjusted to reflect historical levels and for windfall profits.
TOTAL	711,186	517,054	

Claim preparation costs	4,200	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	48,288	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Constructions Materials Company, Abdul Aziz Al-Aly Al-Wazzan and Hamad A-Bu Hassan

UNCC claim number: 4004004

UNSEQ number: E-00942

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	133,980	116,658	Original loss of real property claim reclassified as loss of stock. Claim adjusted to reflect historical levels, for evidentiary shortcomings and obsolescence.
TOTAL	133,980	116,658	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	24,284	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Future Kid for Games & Toys Co.
UNCC claim number: 4004005
UNSEQ number: E-00943

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	139,115	71,448	Claim adjusted for evidentiary shortcomings, a mathematical error and depreciation.
Loss of profits	40,891	18,401	Claim adjusted for evidentiary shortcomings.
TOTAL	180,006	89,849	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Adel Opticals Company
UNCC claim number: 4004006
UNSEQ number: E-00944

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	15,596	7,623	Claim adjusted for failure to repair/replace, evidentiary shortcomings, depreciation and maintenance.
Loss of tangible property	34,387	16,062	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	79,105	0	Insufficient evidence to substantiate claim.
Loss of vehicles	19,500	0	Insufficient evidence to substantiate claim.
Loss of profits	44,493	30,807	Claim adjusted to reflect one-year indemnity period and for evidentiary shortcomings.
TOTAL	193,081	54,492	

Claim preparation costs	6,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	21,205	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abdul Ghafoor & Mohamed Hassan Tifoni Company
UNCC claim number:	4004007
UNSEQ number:	E-00945

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	594,518	210,073	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings, stock build-up, overstocking and obsolescence.
Loss of profits	237,698	6,087	Original loss of income producing property claim reclassified as loss of profit. Claim adjusted to reflect historical results and for evidentiary shortcomings.
TOTAL	832,216	216,160	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.
Interest	62,641	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Modern Diamond Company W.L.L.
UNCC claim number: 4004054
UNSEQ number: E-00947

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	20,698	10,763	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of profits	27,072	9,099	Claim adjusted to reflect historical results.
TOTAL	47,770	19,862	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	The Industrial Buildings & Constructions Co. K.S.C. (Closed)
UNCC claim number:	4004055
UNSEQ number:	E-00948

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	37,285	29,296	Claim adjusted for depreciation and maintenance.
Loss of tangible property	711,793	580,987	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	653,860	416,184	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	68,850	62,164	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
TOTAL	1,471,788	1,088,631	

Claim preparation costs	7,675	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait City Restaurant Co.
UNCC claim number:	4004056
UNSEQ number:	E-00949

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	25,708	24,228	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation.
Loss of stock	3,420	460	Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of profits	77,730	68,299	Claim adjusted to reflect historical results.
TOTAL	106,858	92,987	

Claim preparation costs	1,700	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ahmed Saleh Al Shaya & Partner Co. W.L.L.

UNCC claim number: 4004057

UNSEQ number: E-00950

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	78,105	78,105	Recommend awarding claim in full.
Loss of tangible property	42,060	28,605	Claim adjusted for depreciation.
Loss of stock	422,362	310,103	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock and loss of cash. Claim adjusted for obsolescence, stock build-up and evidentiary shortcomings.
Loss of cash	5,991	0	Insufficient evidence to substantiate claim.
TOTAL	548,518	416,813	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	The Kuwait Book Shops Co.
UNCC claim number:	4004058
UNSEQ number:	E-00951

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	59,359	32,647	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings and failure to repair/replace.
Loss of stock	205,967	133,879	Claim adjusted for evidentiary shortcomings.
Loss of profits	56,064	33,000	Claim adjusted for evidentiary shortcomings and windfall profits.
TOTAL	321,390	199,526	

Claim preparation costs	1,400	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mohammed Taleb & Muneri for Foodstuff Co.
UNCC claim number:	4004059
UNSEQ number:	E-00952

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	250,662	108,120	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and for evidentiary shortcomings.
Loss of profits	24,266	13,343	Original loss of income producing property reclassified as loss of profits. Claim adjusted for evidentiary shortcomings.
TOTAL	274,928	121,463	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Safi International General Trading Company
UNCC claim number: 4004060
UNSEQ number: E-00953

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of profits	28,899	21,674	Claim adjusted for evidentiary shortcomings.
TOTAL	28,899	21,674	

Claim preparation costs	2,250	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwaiti Italian Maintenance Construction and Electric Contracting Co. W.L.L.
UNCC claim number: 4004061
UNSEQ number: E-00954

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	251,069	89,835	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of tangible property	110,593	109,658	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock, loss of vehicles and loss due to restart costs. Claim adjusted for depreciation.
Loss of stock	36,862	13,270	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	94,012	72,657	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
Loss of profits	501,570	150,471	Claim adjusted to reflect a 10-month indemnity period, for windfall profits and evidentiary shortcomings.
Bad debts	11,595	0	Insufficient evidence to substantiate claim.
Restart costs	6,237	0	Insufficient evidence to substantiate claim.
Other loss not categorised	11,826	11,166	Original other loss not categorised claim reclassified as other loss not categorised and loss due to bad debts. Claim for deposits reduced for evidentiary shortcomings.
TOTAL	1,023,764	447,057	

Claim preparation costs	20,168	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Eiffel Technical Products & Distribution
UNCC claim number: 4004062
UNSEQ number: E-00955

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	77,320	41,685	Claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
TOTAL	77,320	41,685	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Behbehani Motors Company
UNCC claim number:	4004063
UNSEQ number:	E-00956

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of contract	28,558	0	Original loss of contract claim reclassified as loss of contract and loss of profits. Insufficient evidence to substantiate claim.
Loss of real property	23,959	11,979	Original loss of real property claim reclassified as loss of real property and loss of tangible property. Claim adjusted for depreciation.
Loss of tangible property	81,680	34,961	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings and depreciation.
Loss of stock	1,601,034	593,930	Claim adjusted for stock build-up and evidentiary shortcomings.
Loss of vehicles	37,400	26,404	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicle adjusted as per paragraph 39 of the report.
Loss of profits	4,043	512	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	1,776,674	667,786	

Interest	263,118	n.a.	Governing Council's determination pending. See paragraph 68 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Wahid Money Exchange Co. W.L.L.
UNCC claim number:	4004064
UNSEQ number:	E-00957

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of cash	385,255	0	Original loss of tangible property claim reclassified as loss of cash. Insufficient evidence to substantiate claim.
Loss of profits	53,410	0	Claim adjusted to reflect historical results.
TOTAL	438,665	0	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Mowasat Hospital Mohd Abdul Aziz Alwazzan and Partners Company
UNCC claim number: 4004065
UNSEQ number: E-00958

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	19,243	3,640	Original restart costs claim reclassified to real property. Claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	140,990	70,434	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property and loss of stock. Claim adjusted for failure to repair/replace, depreciation and evidentiary shortcomings.
Loss of stock	233,282	0	Insufficient evidence to substantiate claim.
Loss of profits	61,715	46,286	Claim adjusted for windfall profits.
TOTAL	455,230	120,360	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Asousi & Abu Hamad Industrial Tools Co.
UNCC claim number: 4004067
UNSEQ number: E-00960

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	1,915	1,227	Claim adjusted for maintenance.
Loss of stock	14,071	11,717	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings.
Loss of profits	15,530	14,336	Claim adjusted to reflect one-year indemnity period.
TOTAL	31,516	27,280	

Claim preparation costs	1,130	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: River-Barody Equipment Co.
UNCC claim number: 4004068
UNSEQ number: E-00961

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	8,828	7,062	Claim adjusted for failure to repair/replace.
Bad debts	1,897,560	452,044	Original loss of business transaction and other loss not categorised claims reclassified as loss of bad debts. Claim adjusted for evidentiary shortcomings.
TOTAL	1,906,388	459,106	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Raad Abdul Razzaq Al Ibrahim and Ghulam
UNCC claim number: 4004069
UNSEQ number: E-00962

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of stock	133,885	94,468	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of profits	10,969	3,226	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	144,854	97,694	

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Alexandria Ready-Made Garments W.L.L.
UNCC claim number: 4004071
UNSEQ number: E-00964

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	12,811	9,400	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	104,324	12,286	Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of profits	21,360	8,051	Claim adjusted to reflect historical results, for windfall profits and evidentiary shortcomings.
TOTAL	138,495	29,737	

Claim preparation costs	250	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex II

Recommended awards for tenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Bairaq Al Zahaby Co. for Readymade Clothes / Badriya Khalaf & Partner
UNCC claim number:	4005768
UNSEQ number:	E-02662

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	5,886	5,886	Recommend awarding claim in full.
Loss of profits	16,682	9,170	Claim adjusted to reflect historical results.
TOTAL	22,568	15,056	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 69 of the report.

Annex III

Claims deferred to a later instalment of "E4" claims pursuant to paragraphs 19-21 reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim no.	UNCC claim no.	Claimant's name
E-0819	4003930	Al Zahra Pharmaceutical Co., Eimad Abdul Rahman Farhan Al Fareh
E-0820	4003931	Heirs of Hussain Marafie General Trading Co.
E-0834	4003966	Nouri Abdulla Alothman & Son Co.
E-0847	4003979	Soubeyah Trading & Cont. Co. (Stacco)
E-0856	4003987	Gharabally International Co. (Mezher Al Gharabally & Partners) W.L.L.
E-0860	4003939	Al Muhalab Contracting & Trading Co. (Partnership Co.)
E-0866	4003945	Tires Center Co.
E-0875	4003954	Al Zenah Jewellery Co. W.L.L.
E-0879	4003958	Saad Ud-Din Trading Company
E-0882	4003992	Al Safwa Interiors Co. W.L.L.
E-0883	4003993	Saba Trading & Contracting Co.
E-0916	4004033	Ahmed Fahad Al Fahad Trading & Contracting Co.
E-0959	4004066	Annawat Trading Co. W.L.L.
E-0963	4004070	The Golden House Co.
E-0965	4004072	Kuwait Future Co. for Furniture Elec. & Home Appliances/Ali Jarrahal Sabah & Partners

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the tenth instalment of "E4" claims taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the tenth instalment of "E4" claims, covering 141 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in annex I of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Kuwait	125	1	192,721,488	81,769,411

1/ The text of the report appears in document S/AC.26/2000/22.

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and decision 100 (S/AC.26/Dec.100 (2000)),

4. *Recalls* that when payments are made in accordance with decisions 73 and 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Notes* that no recommendations have been made at this stage for 15 claims referred to in paragraphs 19 to 21 and annex III of the report,

6. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

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S/AC.26/2000/23
29 September 2000

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UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

ELEVENTH REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE

Introduction

1. The present report identifies, pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in category "A".

2. Recommendations for corrections to category "A" claims include duplicate claims and other miscellaneous corrections reported by Governments.

I. CATEGORY "A" DUPLICATE CLAIMS

3. Since the tenth article 41 report (S/AC.26/2000/14), a total of 352 category "A" claims have been found to be duplicates of other claims also awarded compensation in category "A".

4. The majority of the duplicate claims have been reported by the Government of Sri Lanka. At the time of the preparation of the tenth article 41 report, Sri Lanka had identified 562 potential duplicate claims in the fourth and fifth instalments. The secretariat was able to verify 346 of those claims, which were subsequently corrected in the tenth article 41 report. The verification of the remaining claims remained pending.

5. The Government of Sri Lanka has since identified an additional 253 duplicate claims in the sixth instalment. The secretariat has now completed the review of these reported duplicate claims from Sri Lanka and has confirmed as duplicates 112 claims from the fifth instalment and 208 claims from the sixth instalment, for a total of 320 claims. In the case of a number of remaining potential duplicate claims, the secretariat has requested additional information from Sri Lanka in order to assist in the verification of those claims.

6. In addition to the claims from Sri Lanka, 11 duplicate claims were reported by the Government of India and nine duplicate claims were reported by the Government of Pakistan. In addition, based on an understanding between the Government of the Federal Republic of Yugoslavia and the Government of Bosnia and Herzegovina, 12 claims originally identified as duplicate claims of Bosnia and Herzegovina have been reinstated and the 12 corresponding claims of the Federal Republic of Yugoslavia have now been identified as duplicates.

7. No compensation should have been awarded for these 352 duplicate claims and the total recommended awards should be revised accordingly. Table 1, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced.

Table 1. Category "A" duplicate claims

Country	Instalment	Total number of duplicate claims	Amount of reduction (USD)
India	First	1	4,000.00
	Third	1	2,500.00
	Fourth	3	10,500.00
	Fifth	3	10,500.00
	Sixth	3	12,000.00
Pakistan	Fourth	1	2,500.00
	Fifth	3	10,500.00
	Sixth	5	22,500.00
Sri Lanka	Fifth	112	448,000.00
	Sixth	208	832,000.00
Yugoslavia, Federal Republic of	Fifth	1	4,000.00
	Sixth	11	44,000.00
Total		352	1,403,000.00

II. OTHER CATEGORY "A" CORRECTIONS

A. Non-duplicate claims

8. As noted in paragraph 6, infra, 12 claims for Bosnia and Herzegovina, originally found to be duplicates of claims submitted by the Federal Republic of Yugoslavia, should have been reinstated and the corresponding claims for the Federal Republic of Yugoslavia claims reported as duplicates. In addition, based on additional information received from both the Government of Kuwait and the Government of Bosnia and Herzegovina, two claims originally reported as duplicates have now been shown to have been submitted by different individuals.

9. Table 2, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be increased.

Table 2. Category "A" non-duplicate claims corrections

Country	Instalment	Total number of claims reinstated	Amount of increase (USD)
Bosnia and Herzegovina	Fifth	1	4,000.00
	Sixth	12	48,000.00
Kuwait	Sixth	1	4,000.00
Total		14	56,000.00

B. Corrections to family claims

10. Four claims originally filed as family claims have been found to be claims submitted by individuals. Accordingly, two claims submitted by the United Kingdom and one claim submitted by India have had their claim amounts reduced from USD 5,000 to USD 2,500 and one claim submitted by the Federal Republic of Yugoslavia has had its claim reduced from USD 8,000 to USD 4,000.

11. Table 3, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be increased.

Table 3. Category "A" family claim corrections

Country	Instalment	Number of claims affected	Amount of net effect (USD)
India	Fifth	1	(2,500.00)
United Kingdom	First	1	(2,500.00)
	Fifth	1	(2,500.00)
Yugoslavia, Federal Republic of	Fifth	1	(4,000.00)
Total		4	(11,500.00)

12. The adjusted claim awards for the first and third to sixth instalments, and the total revised recommended awards for category "A" claims, are located in tables 1-6 in the annex to this report.

Annex

CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 3-15, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	25,040,500.00	25,036,500.00
United Kingdom	821,500.00	819,000.00

Table 2. Third instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	16,729,500.00	16,727,000.00

Table 3. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,290,500.00	146,280,000.00
Pakistan	22,616,000.00	22,613,500.00

Table 4. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	3,476,000.00	3,480,000.00
India	147,580,000.00	147,567,000.00
Pakistan	22,955,500.00	22,945,000.00
Sri Lanka	70,158,500.00	69,710,500.00
United Kingdom	1,311,000.00	1,308,500.00
Yugoslavia, Federal Republic of	3,794,500.00	3,786,500.00

Table 5. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	1,780,000.00	1,828,000.00
India	17,325,000.00	17,313,000.00
Kuwait	17,136,500.00	17,140,500.00
Pakistan	46,258,000.00	46,235,500.00
Sri Lanka	36,403,000.00	35,571,000.00
Yugoslavia, Federal Republic of	876,000.00	832,000.00

2. Based on the above corrections, the revised category A claim total recommended awards by instalment are as follows:

Table 6. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,606,000.00	189,599,500.00
Second	641,244,500.00	no change
Third	531,499,000.00	531,496,500.00
Fourth	732,657,000.00	732,644,000.00
Fifth	783,131,000.00	782,653,000.00
Sixth	316,254,500.00	315,396,000.00
Special	2,554,500.00	no change

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95 and 99 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000) and S/AC.26/Dec.99 (2000)).

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COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the correction of awards for category "A" claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 99th meeting, held on 28 September 2000 at Geneva

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary concerning the correction of awards for claims in category "A" 1/,

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations. 2/ The aggregate corrected amounts per country and instalment, are as follows:

Table 1. First instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)

1/ The text of the report appears in document S/AC.26/2000/23.

2/ In conformity with the provisions on confidentiality in the Rules (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	25,040,500.00	25,036,500.00
United Kingdom	821,500.00	819,000.00

Table 2. Third instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	16,729,500.00	16,727,000.00

Table 3. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
India	146,290,500.00	146,280,000.00
Pakistan	22,616,000.00	22,613,500.00

Table 4. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	3,476,000.00	3,480,000.00
India	147,580,000.00	147,567,000.00
Pakistan	22,955,500.00	22,945,000.00
Sri Lanka	70,158,500.00	69,710,500.00
United Kingdom	1,311,000.00	1,308,500.00
Yugoslavia, Federal Republic of	3,794,500.00	3,786,500.00

Table 5. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Bosnia and Herzegovina	1,780,000.00	1,628,000.00
India	17,325,000.00	17,313,000.00

Country or international organization	Previous total recommended award (USD)	Corrected total recommended award (USD)
Kuwait	17,136,500.00	17,140,500.00
Pakistan	46,258,000.00	46,235,500.00
Sri Lanka	36,403,000.00	35,571,000.00
Yugoslavia, Federal Republic of	876,000.00	832,000.00

2. Decides also that, based on the above corrections, the revised recommended awards by instalment are as follows:

Table 6. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (USD) a/	Corrected total recommended award (USD)
First	189,606,000.00	189,599,500.00
Second	641,244,500.00	no change
Third	531,499,000.00	531,496,500.00
Fourth	732,657,000.00	732,644,000.00
Fifth	783,131,000.00	782,653,000.00
Sixth	316,254,500.00	315,396,000.00
Special	2,554,500.00	no change

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95 and 99 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), (S/AC.26/Dec.79 (1999), (S/AC.26/Dec 85 (1999), S/AC.26/Dec.95 (2000) and S/AC.26/Dec.99 (2000)).
